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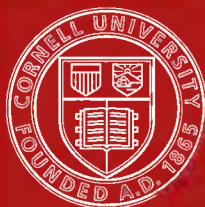
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THE LEGAL PROFESSION
IN
UPPER CANADA
IN ITS
EARLY PERIODS.

BY
WILLIAM RENWICK RIDDELL, LL.D.,
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"I HOLD EVERY MAN A DEBTOR TO HIS PROFESSION."
BACON, "THE ELEMENTS OF THE COMMON LAW," PREFACE.

TORONTO,
PUBLISHED BY THE LAW SOCIETY OF UPPER CANADA,
1916.

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DEDICATION.

THIS VOLUME IS DEDICATED TO THE MEMORY
OF

SIR ÆMILIUS IRVING, K.C.,

AND

GEORGE FERGUSSON SHEPLEY, ESQ., K.C.,

SOMETIME TREASURERS

OF THE LAW SOCIETY OF UPPER CANADA

—DULCE DECUS MEUM—

IN TOKEN OF GRATEFUL RECOGNITION OF THEIR

UNVARYING COURTESY AND KINDLY

CONSIDERATION,

BY

THEIR FORMER COLLEAGUE AND

FELLOW-BENCHER,

THE AUTHOR.

OSGOODE HALL, TORONTO,
JANUARY 18TH., 1916.

PREFACE.

This work is the result of very many hours of diligent and at the same time pleasant research. To one who loves and is proud of his profession there is nothing more interesting than its history; and the history of the legal profession in this Province—Upper Canada or Ontario—yields in interest to that of no other.

It is my hope that the attention of others may be drawn to our past by these pages, and that others may be induced to add to our knowledge of the men and times of old.

I am wholly responsible for everything in this book (proof-reading included) except where otherwise specifically stated; and shall be glad to be informed of any error which may have crept in.

The somewhat gossip nature of certain portions of Part IX. is deliberate; I desired to place on record all that was known of the persons mentioned; and hope that those who may have better information concerning them will make it public.

Some of the matter contained in this work has already appeared in different form in addresses to various Bar Associations, e.g., of New York, Missouri, Michigan, Chicago, etc., and in papers in legal publications, e.g., the *Canada Law Journal*, the *Canadian Law Times*, the *Pennsylvania Law Journal*, the *Yale Law Journal*, the *Illinois Law Journal*, the *Journal of the American Institute of Criminal Law and Criminology*, etc., or in other magazines; but it is here presented in somewhat more systematic form.

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PART I.

THE BARRISTER AND
THE ATTORNEY (OR SOLICITOR).



THE BARRISTER AND THE ATTORNEY (OR SOLICITOR)

CHAPTER I. INTRODUCTORY.

In the following pages, I propose to deal with the Legal Profession in this Province in certain aspects, and during certain periods.

I adopt 1857 as the date before and extending to which, to pursue the enquiry—anything after that date will be touched on only incidentally—certain supplementary notes are added to comply with the request of Convocation.

That date has been adopted as it may fairly be considered the time at which our present system began: and it is a coincidence that, the Law Society beginning its career in 1794, the date is about the end of the first half from 1797 down to the present.¹

When the history of the legal profession in this Province comes to be written, it will naturally divide itself into five periods:—

First, until the coming into force of the Act of 1794, 34 Geo. III., c. 4 (U.C.);

Second, from that time to the coming into force of the Law Society's Act of 1797, 37 Geo. III., c. 13 (U.C.);

Third, from that time to the coming into force of the Act of 1822, 2 Geo. IV., c. 5 (U.C.);

Fourth, from that time to the coming into force of the Act of 1857, 20 Vic., c. 63 (Can.); and,

Fifth, from that time onward.

With the first period should be taken the time from the first settlement of the country to the change in the administration of the new and recently formed Province of Upper Canada, Monday, December 26th, 1791, under Proclamation of Lieutenant-Governor Alured Clarke, dated November 18th, 1791², the Proclamation itself being authorized by the Quebec Act of 1791, 31 Geo. III., c. 31 (Imp.).

CHAPTER II.

BARRISTERS AND ATTORNEYS (OR SOLICITORS)—BEFORE THE LAW SOCIETY'S ACT.

In England a Barrister cannot be a Solicitor and could not (when that title was used) be an Attorney; an Attorney or Solicitor could not and cannot be a Barrister. Until very recently the Attorney carried on proceedings in the Common Law Courts, the Solicitor in the Courts of Equity; the Judicature Acts in England and in Ontario have abolished the title "Attorney"; and all practitioners of that branch of the profession have become "Solicitors" only. But there is still the rule in England that the same person cannot be both Barrister and Solicitor—if, being a Solicitor, he desires to be called to the Bar, he must have his name struck off the Rolls as Solicitor.³

In most of the American States, there is no such distinction as that between Barrister and Attorney—the practitioner is generally called an Attorney or an Attorney-at-Law, and is authorized to conduct all kinds of legal practice, whether Attorney's work proper or that of a Barrister.

Our system seems anomalous, agreeing with neither English nor American: in a Province which always has boasted that its legal system was based upon that

of England and many of whose earlier Judges were trained in the English Inns of Court, it is somewhat curious that the English system was not adopted originally or at least when the Province became populous and wealthy. That the American system was not followed may perhaps be accounted for by the fact that the early settlers were mainly United Empire Loyalists who, shamefully misused in the land of their birth, brought with them into our northern wilds no great love or admiration for the new Republic or its ways:

Both history and, as I think, accident, play their part in this variation from English practice.

So long as Canada remained a French possession there was no division in the legal profession; the same person might and often did exercise the function of Advocate or Barrister, Notaire (notary) and even Arpenteur (land surveyor).

No change was made in that respect by the victors on the Conquest in 1759-60, or by the Royal Proclamation of October 7th, 1763, which introduced into Canada the English Law, Civil and Criminal. This Proclamation also established a "Province of Quebec" which included in its area not only what is now the Province of Quebec but also what was afterwards the Province of Upper Canada and is now the Province of Ontario. When the Quebec Act was passed, (1774) 14 Geo. III., c. 83 (Imp.), it was not considered advisable to modify the existing practice.

But, April 30, 1785, an Ordinance was made by the Lieutenant-Governor, Henry Hamilton, being Ordinance 25 George III., c. 4 (Quebec), which by article 1 enacted that thenceforth no one should be commissioned, appointed or permitted to practise as a barrister, advocate, solicitor, attorney or proctor at law who had not served during the space of five years under a contract in writing with some advocate or attorney duly admitted and practising in the Courts in the Province or elsewhere in His Majesty's Dominions

or for six years with some clerk or register of a Court of Common Pleas or Court of Appeals in the Province, with a proviso in favour of those called to the Bar or admitted to practise as advocates or attorneys elsewhere in the Empire. The candidate was also to be examined by some of the first and most able barristers, advocates or attorneys in the presence of the Chief Justice of the Province or of two or more Judges of the Courts of Common Pleas, and be certified by the Chief Justice or the Judges as of fit capacity and character to be admitted to practise law.

Article 2 makes a similar provision for an intending Notary to serve five years with a Notary, and to be examined by some of the eldest notaries in the presence of the Chief Justice of the Province or of two or more Judges of the Court of Common Pleas of the District wherein he served his clerkship, and be approved by them.

Article 6 provides that thenceforth barristers, advocates, solicitors, attorneys or proctors at law (and also land surveyors), should not practise as notaries; that no notary was to act as land surveyor or barrister, etc., that "these several occupations of practising the law in His Majesty's Courts in this Province * * * and of notary and of land surveyor shall be held and exercised separately and by different persons to the end and purpose that the functions and duties of the one may not interfere with the other."⁴ All practitioners were given twelve months to elect which branch of the profession they would follow.

After the Conquest, many had been admitted to practise in the Courts, of whom not a few were of English or Scottish descent and, of course, English-speaking.⁵ It is not unlikely that this Ordinance was passed at their instance: at all events a strongly worded petition was presented to the King by the French-speaking "*Avocats et Notaires en la Province de Québec.*"

They, "devoted from tender youth to the study and practice of the laws and of justice" reminded the King of their services under arms and called to witness Sir Guy Carleton, Cramahé (his Lieutenant) and Thomas Dunn, a member of the Legislative Council, all then in London. "Poor in goods, but rich in the justice and protection of Your Majesty, the honour, the science of law, their assiduity at the Bar and in the office of Notary * * * made inestimable riches," and enabled them to live in an honourable if moderate style: but the ordinance complained of would tend to ruin them without any advantage to the Province. The poverty of the inhabitants could not support two professions, and there was no demand or need for such an ordinance; the two professions were not at all incompatible, no more so than those of surgeon and physician or apothecary.⁶ The petition was unavailing and the distinction between the practitioner in the Courts and the notary still obtains in the present Province of Quebec.

In 1788, four Courts of Common Pleas were established in the territory afterwards to be the Province of Upper Canada but then part of the Province of Quebec, one in each District; they were, of course, under the then existing law and practice.⁷

At that period, therefore, there were two branches of the profession such as exist to-day in our sister Province of Québec—the practitioner in the Courts (Barrister, Solicitor, Advocate and Attorney) and the Notary, to whom we have in our law nothing analogous but whose functions are of great importance in Civil Law countries. Our Notary Public is but a feeble image of the "Notaire." There was no distinction between Barrister and Attorney as in the English law.

In 1791 was passed the Act 31 Geo. III., c. 31 (Imp.), commonly called the Canada Act or the Constitutional Act, which enabled the vast territory of the Province of Quebec to be effectively divided into two provinces, the western being called Upper Canada and the eastern

Lower Canada, each with its own Parliament and Lieutenant-Governor.⁸

The first Act of the first Parliament of Upper Canada (1792) 32 Geo. III., c. 1 (U.C.), introduced the English Civil Law; but no change was then made in the profession. There were not many practitioners in the Province skilled in the English Law: it has often been said that there were only two, but tradition does not give their names and no record seems to exist. There was certainly one who had been duly admitted to practise as an "Avocat" at Montreal and who was then practising in the Court of Common Pleas in the District of Hesse (Judge, Counsel and most litigants living in Detroit but the Court held at L'Assomption, now Sandwich): this was Walter Roe, admitted April 13, 1789. He was, however, educated in the French-Canadian, not the English civil law.

When in 1794, the Courts of Common Pleas were abolished and a Court of King's Bench for the whole Province established, it was thought advisable to provide a body of practitioners. Accordingly the Act 34 Geo. III., c. 4 (U.C.), was passed: this recites "whereas much inconvenience may ensue from the want of persons duly authorized to practise the profession of the law in this Province": Sec. 1 suspends for two years from the passing of the Act the operation of the Ordinance of 1785 so far as it affected "Advocates, Attornies, Solicitors and Notaries": Sec. 2 authorizes the Governor, Lieutenant-Governor or Person administering the Government to license such and so many British subjects "not exceeding sixteen in number as he shall deem from their probity, education and condition of life best qualified to act as Advocates and Attornies in the conduct of all legal proceedings in this Province": a Roll was to be provided and kept among the records of the Court of King's Bench and upon production of the licences, the names were to be inscribed on this Roll; and no person whose name was not so inscribed was authorized to receive fees for

practising in any of the Courts of the Province. The Court of King's Bench was authorized upon proof of malversation or corrupt practice to strike off the Roll the name of any one found offending. Section 4 allowed any person qualified under the provisions of the Ordinance of 1785 to be permitted to practise and to have his name inscribed in the Roll without paying any fee: any one enrolled as having received a licence under the Act paid 13s. 4d. (\$2.67) to the Clerk of the Court and 40s. (\$8.00) to the Governor's Secretary for the licence.

This Act began the second period of the history of our profession. A Roll was provided, still preserved with care at Osgoode Hall; on this were entered the names of those licensed and admitted.⁹ They were admitted "to the degree of an Advocate and to that of an Attorney"; they took the oaths of abjuration, allegiance and supremacy and signed the Declaration against Transubstantiation (Roman Catholics were excused from the requirements enforced against others, and were allowed oaths, etc., against which they had no conscientious objection.¹⁰)

CHAPTER III.

BARRISTERS AND ATTORNEYS, MEMBERS OF THE LAW SOCIETY.

This second period, in which there was yet no distinction between Barrister (Advocate) and Attorney, came to an end in 1797. The Act 37 Geo. III., c. 13 (U.C.) repealed the Ordinance of 1785 (which had again come into force by lapse of time) so far as it might "relate to barristers, advocates, attornies or solicitors." Section 1 provided that it should be lawful "for the persons now admitted to practise in the law, and practising at the Bar of any of His Majesty's Courts of the Province, to form themselves into a

Society to be called the Law Society of Upper Canada, as well for the establishment of order amongst themselves, as for the purpose of securing to the Province and the profession a learned and honorable body, to assist their fellow subjects as occasion may require, and to support and maintain the Constitution of the said Province." Section 5 provided that except the present practitioners, no one should be permitted to practise at the Bar of any of His Majesty's Courts in the Province unless he had "been previously entered of and admitted into the said Society as a student of the laws and shall have been standing in the books of the said Society for and during the space of five years and shall have conformed himself to the rules and regulations of the said Society and shall have been duly called and admitted to the practice of the law as a Barrister according to the Constitution and establishment thereof." Persons admitted to practise at the Bar in England, Scotland, Ireland or any of His Majesty's North American Provinces were allowed upon production of testimonials of good character and conduct to the satisfaction of the Judges of the Court of King's Bench, to be admitted to practise provided they within one month entered themselves of the Society. Any time spent under Articles before the passing of the Act was to be considered part of the five years *pro tanto*. This section covered the case of Barristers.

Section 6 for the first time in our Province introduced the distinction between Barrister and Attorney or Solicitor. "Nothing in this Act contained shall prevent any person who hath been regularly articulated with any person in this Province, duly authorized to take a clerk and shall have been standing in the books of the Society aforesaid for and during the space of three years from acting merely as an Attorney or Solicitor¹¹ in any of His Majesty's Courts of law or equity in this Province."

This section is not very clearly drawn: the interpretation placed upon it was that the intending At-

torney must serve five years under Articles, be admitted to the Society and remain three years on its books.¹²

Here, then, we for the first time have the Barrister and the Attorney differentiated: the Barrister must have been on the Books of the Society for five years and (so far as the provisions of the Statute go) need not have been under Articles at all; the Attorney must have served five years under articles and have been on the Books of the Society for three years.

The record of the Proceedings of Parliament for the session of 1797 is not available¹³ and it is not quite certain by whom the Act was introduced. However, it is probable that the real author was John White the Attorney General: he was not a member of this the Second Parliament but was undoubtedly a man of great influence and was *persona grata* at headquarters.

I have no doubt that it was intended effectually to divide the profession into two branches, so that the same person should not be at the same time Barrister and Solicitor; and had it not been for the action of the Law Society itself, this object might have been attained. It is however to be remarked that the Act made a divergence from the English practice: in Upper Canada the Attorney must be a member of the Law Society for three years while in England the Inns of Court had nothing to do with the Attorney, leaving him to the Inns of Chancery.¹⁴

The Society was organized at a meeting at Wilson's Hotel, Newark (Niagara-on-the-Lake), July 17, 1797: ten practitioners attended and upon that day conferred the degree of Barrister-at-Law upon all who applied including themselves, fifteen in all. There were four practitioners who never applied for the degree and never became members of the Law Society.¹⁵

The Act by section 2, authorized the Society "to form a body of rules and regulations for its own government under the inspection of the Judges of the

Province for the time being as Visitors of the * * * Society." At this first meeting, nothing was done in respect of qualification for membership, but at the fifth meeting, Saturday, November 9, 1799, the Solicitor-General, Gray, proposed amongst others as rule No. 7 the following: "Whenever any person shall hereafter wish to be admitted as a student and as such to have his name inserted upon the Books of the Law Society, the name and description of such person shall be given at a general meeting of the Benchers by the master or intended master of such person to the Treasurer for the time being, and such master shall at the same time give in a written declaration upon honour signed by him that the said person is or has been his Articled Clerk and shall have served as such and that in his opinion he is qualified by education, principles and habits of life to become a member of the Society and is really and bona fide to be or has been a clerk of him the said master or intended master." The Attorney-General, White, objected to this Rule and (unless I have made a mistake in supposing that he desired a separation of the branches of the profession) it was clearly objectionable from his point of view¹⁶—contemplating as it did that every student admitted on the Society's Roll should be an actual or intended Articled Clerk, and therefore on his way to become an Attorney. There was no provision whereby a "Student-at-law" proper, that is a student not under articles and proceeding simply to the degree of Barrister-at-law, could be admitted. The Solicitor General and the five others present at the meeting (all educated on this continent)¹⁷ voted the Attorney General down and the Rule carried. The Rule was laid before the Judges¹⁸ and in view of the objection of the Attorney General was by them referred back to the Society: before it could be again considered by the Society, White died.¹⁹ The Rule was read again at the meeting of Thursday, January 16, 1800 and again passed—the same day it was again laid before the Judges and

“the Attorney General’s objection overruled by the Judges.”

In view of the very great influence of the Attorney General, an English Barrister, and of the natural inclination of the Judges, all of whom had been educated for and called to the English Bar,²⁰ it is not at all unlikely that the accident of White’s death was the reason of the Rule being adopted, and thus the practical certainty of the rejection of the English system assured.

All persons, then, who were desirous of being called to the Bar must first be under articles as Articled Clerks: and no one could become an Attorney unless he first became a member of the Law Society as student and remained as such three years.²¹

The term of service under Articles as we have seen was five years.²² No doubt it was the obligation upon one intending to become an Attorney, to become a member of the Law Society in precisely the same way as one desiring to become a Barrister, which brought it about that during this period an extremely small number of Attorneys failed to become Barristers—indeed I can find only three in that case out of 49, i.e., about 6%.²³

A rather larger proportion became Barristers without being admitted as Attorneys—leaving aside special cases, there were three out of 42, i.e., about 7%.²⁴

There does not seem to have been any dissatisfaction with this system in the Province at large: but among the Benchers were those who desired a separation of the profession.

CHAPTER IV.

BARRISTERS AND ATTORNEYS (OR SOLICITORS)
AFTER THE ACT INCORPORATING THE
LAW SOCIETY.

It had become necessary that an Act of Incorporation should be obtained for the Society, the Act of 1797 forming it into an organization indeed but not creating a corporation.

An Act was applied for to incorporate the Society: it was desired to build and for that purpose to own land, &c.,²⁵ The opportunity was taken advantage of to insert a clause in this Bill removing Attorneys from the supervision of the Law Society altogether. That the Bill was promoted by the Law Society is wholly beyond question, as its history will show. Notice of the introduction of the Bill was given by the Attorney General, John Beverley Robinson, as soon as the Session opened; he moved that leave should be given to bring it in and Mr. Archibald McLean, also a Bencher, seconded the motion, December 1, 1821: there was a division on the report of the Committee of the Whole, December 3, 1821, 20 to 9. In the majority were five Benchers, none in the minority; the third reading also produced a division 19 to 12, the same five Benchers voting with the majority. Sent up to the Council, it was returned without amendment.

Section 3 of the Act which is (1822) 2 Geo. IV., c. 5 (U.C.), repealed the provision of the Act of 1797 requiring an Attorney to have been three years on the Books of the Law Society, but continued the obligation to have served five years under written articles.

The simple examination for admittance—or matriculation—into the Society which had been prescribed in 1819, does not seem to have been much of a deterrent. Before that date the intending student required for admission to the Books of the Society

nothing but a certificate from his master, actual or intended. But in 1819, Hilary Term 60 Geo. III., a Rule No. 18 was passed and approved by the Judges (Powell, C.J., Campbell and Boulton, JJ.), requiring all persons applying for admission to the Society to give a written translation in the presence of the Society of a portion of one of Cicero's Orations or perform such other exercises as should satisfy the Society of his acquaintance with Latin and English Composition. ²⁶

Unimportant as this examination was as a deterrent, it was absolutely removed by this Act: and the Attorney was no longer required to pass any examination. The third period thus ends.

Before leaving this period, however, attention should be called to the Act of 1803, 43 Geo. III., c. 3 (U.C.). This recited that "great inconvenience has arisen and is now experienced by His Majesty's subjects in several parts of this Province from a want of a sufficient number of persons duly authorized to practise the profession of the law, and unless the number can be speedily increased, justice will in many places be with great difficulty administered." The Act then proceeded to empower "the Governor, Lieutenant Governor * * * or person administering the government to authorize by licence * * * such and so many of His Majesty's liege subjects not exceeding six in the whole as he from their probity, education and condition in life shall deem fit and proper, to practise the profession of law in this Province * * ." On production of the licence, they were to be enrolled as Attorneys of the Court of King's Bench and thereafter to be admitted members of the Law Society. Before applying for licence, the applicant must obtain a certificate from the Chief Justice (or in his absence, from the senior puisne Judge) of the King's Bench that the Court was satisfied of his probity and his fitness to practise as a Barrister and Attorney in this Province. Five persons received a licence under this Act. ²⁷

The Act of 1822 brought in the fourth period and at length went far to make a separation of the branches of the profession.

Of course the effects were not immediate—until 1832 there was only one person who became an Attorney and did not become a Barrister;²⁸ he had been admitted into the Law Society in 1821.

The anticipated result not having been achieved, other methods were tried.

First, in May 3, 1828, a Rule was approved which did away with the necessity of a student producing the certificate of the master actual or intended, to whom he was or was to be articled. Then in Easter Term, 11 Geo. IV., April 29th, 1830, the following resolutions were passed by Convocation:

“It is the opinion of this Convocation that the separation of the two branches of the profession, that of Barrister and Attorney, will materially tend to the securing to the Province a Learned and Honourable Body to assist their fellow-subjects as occasion may require and to support and maintain the Constitution of the said Province.

2 * * * that the Attorney General, Mr. Rolph and Mr. R. Baldwin (the mover, Dr. Baldwin, was afterwards substituted for the latter) be a Committee to consider and digest the means and arrangements necessary to carry into effect the foregoing resolution with all the advantage and as little inconvenience as practicable to both branches of the profession—and that the Committee report on the subject next Term.

3 * * * that the foregoing resolution be communicated to the Judges of His Majesty's Court of King's Bench and to the several Benchers throughout the Province.”

A temporizing resolution was voted down, which was as follows:—

“That it is expedient to enter at as early a day as convenient upon the consideration of the question how far the separation of the two branches of the profession would tend more effectually to insure to the Province a learned and honourable body to assist their fellow subjects as occasion may require and to support and maintain the Constitution of the Province.”²⁹

The Committee (the Attorney General, Boulton, and Drs. Baldwin and Rolph) reported Trinity Term, 11 Geo. IV., and recommended the adoption of the following Rule:—

“That from and after the last day of this present Term of Trinity, no Attorney shall be admitted to the degree of Barrister of this Society so long as his name shall continue upon the Roll of Attornies in any Court in this Province. Provided that nothing herein contained shall prevent any person whose name shall have been heretofore or shall during this present Term be entered upon the Books of this Society from being called to the Bar at the expiration of the period required for their admission.” The Report was adopted, the Rule passed.³⁰

It was by the Treasurer, Mr. George Ridout, submitted to the Judges “who did not signify their pleasure thereon” at the time. The following year, Trinity Term, 1 & 2 Wm. IV., July 1, 1831, the Treasurer reported that “the Judges had not agreed to the draft of a Rule for the division of the Profession.”³¹ This put an end to the movement for some time.

The rule passed Hilary Term, 8 Geo. IV. January 11, 1828, and approved the next day by the Judges, had great effect—that required all students thereafter to be entered on the Books of the Society, to keep four terms at least at York, within the period of their five years entry;³² this meant that every student must be a considerable time in York (Toronto). The rule was rigidly enforced, and more than one lost his year by not keeping his terms properly. The result of this rule:

was not in itself so marked: but, July 2, 1831, the Benchers passed another Rule approved by the Judges, November 19, which required every candidate before he was admitted as a student and before being called to the Bar, to be examined, and "upon full and strict examination in open Convocation * * * found * * * to be * * * duly qualified to be admitted on the Books as a student-at-law or to be called to the Bar respectively as the case may be."

The effect of these Rules was soon manifest: while all Attorneys admitted as such before 1832 (except those already mentioned) became Barristers, in 1832 the differentiation began to be marked. In 1832 out of 11 Attorneys 3 failed to become Barristers, one of whom did not enter himself of the Law Society as a student-at-law—the following years the numbers were 16, 4 and 2 respectively.³³

The Attorney paid no fee, passed no examination and was not subject to discipline of the Law Society:³⁴ no greater temptation could be laid before the ignorant aspirant. The examinations in the Law Society were serious matters; the records are full of candidates being rejected—the natural result followed.

From a report presented February 8, 1840, it appears that of the number of persons admitted on the Common Roll, 436, there were still 157 students—the rest had graduated or dropped: of the number of Barristers called, 247, there remained 183, of whom 148 were in active practice, 37 of them in Toronto. All these 148 were Attorneys but 2: there were, however, 119 who had been admitted members of the Society who had not become Barristers but were practising as Attorneys. That is, of the 267 lawyers in practice (and of the 302 entitled to practise) 119 were Attorneys only and 2 Barristers only—over 40% of the practising Attorneys had not proceeded to the Bar, but the number of practising Barristers who were not Attorneys was negligible.³⁵

In this year also a Bill was introduced into the Legislature for the separation of the two branches of the profession. This provided that from and after the end of Easter Term 1841, no one should practise both as Barrister and Attorney or Solicitor:³⁶ any Attorney or Solicitor who wished to practise as a Barrister must have his name struck off the Rolls of Attorneys and (or) Solicitors: any Barrister who wished to practise as an Attorney or Solicitor must cause himself to be disbarred.

The Bill was introduced in the Assembly and read the first time January 7: it was ordered to be read the second time on the morrow but was abandoned: no doubt it was found that it could not pass. It never came up in the Legislative Council and was not again heard of.³⁷ This seems to have been the last attempt in that direction: the first move having been frustrated by the Judges, the second by the Legislature.

In the following year by a Report of Easter Term, 4 Vic., February 6, 1841, it appears that twenty-two had been admitted Attorney during 1840 which, added to the 119 already in practice as Attorneys made 141³⁸ altogether, practising that branch of the Profession: and that in addition to the 148 Barristers there were 18 called during the year, making 166 practising Barristers in all.

Of the practising Attorneys, 292 in number, 132 were not Barristers, i.e., 45%: while of the 166 Barristers only 5 were not Attorneys, i.e., 3%: or to put it in another way, of the practitioners of law 297 in number, 161 (54%) were both, 131 (44%) were Attorneys only 5 (2%) Barristers only.

CHAPTER V.

BARRISTERS AND ATTORNEYS (OR SOLICITORS): OCCASION AND EFFECT OF ACT OF (1857) 20 VIC., C. 63.

The increase in the number of Attorneys who were not Barristers caused a great deal of dissatisfaction both to the public and to the profession.

The views of many may be said to be fairly expressed in the following article in the *Canada Law Journal* of a little later date. Speaking of the admission of Attorneys a writer in that journal says:—

“Existing laws afford no guarantee of fitness. A young man whose only qualification for entering the study of the law is ability to read and write, may be articled to an attorney, spend five years copying and serving papers or idly kicking his heels against the office desk, or in doing the dirty work of a disreputable practitioner. At the end of that time, armed with a certificate of service, he claims to be sworn in as an Attorney of Her Majesty’s Court, and is sworn in accordingly. He may know nothing whatever of professional duties, may, in fact, be grossly illiterate and deficient in every acquirement that would enable him to act with safety and advantage for a client; and yet the law entitles him, simply on proof of service under articles, to the certificate enabling him, the holder, to undertake the most important duties of an attorney.” (1855) 1 *Can. Law Journal*, O.S., p. 163.

An editorial in the following year, 1856, 2 *Can. L.J.*, O.S., at p. 50, after pointing out the precaution taken to secure a learned Bar by an examination, preliminary and final, proceeds: “The attorney is subject to no examination whatever, preliminary or final. The barrister must have proved his fitness, the fitness of the attorney is presumed.”

That a large number became attorneys without being called to the Bar was due beyond any question to the examination the Barrister must undergo.³⁹ While many of these attorneys were of a high type and thoroughly competent practitioners, no small number were not. The lawyer who "could not put on a gown" was not infrequently classed with the "herb-doctor": too frequently he did not deserve any higher rating.

The number kept increasing until in the year 1856—while out of 16 Barristers called all but 2 became attorneys—out of the 31 attorneys admitted only 7 were called to the Bar during that year and only an additional 7 were called later, leaving 17 out of 31 (55%) who never became Barristers.

This proved the finishing touch: the Legislature at length gave the Law Society full jurisdiction over Attorneys as well as Barristers. In 1857, the Act 20 Vic. c. 63 (Can.) required the Law Society, before any person should be admitted as an Attorney or Solicitor "to examine and enquire by such ways and means as they should think proper touching the fitness and capacity of such person to act as an Attorney or Solicitor"; and then and not otherwise the Judges might on production of the Law Society's Certificate of fitness admit the candidate as an Attorney and Solicitor.

This introduced the modern system: it still is law, and just as no Court can hear a Barrister who has not been called by the Society, so no Court can admit a Solicitor without the certificate of the Society. The Society is the sole judge of the fitness and capacity of either; and the legal profession is master in its own house.

The Bill was introduced in the Legislative Council by Hon. James Patton, March 27, 1857, and he was supported by Col. Prince—the Committee to which it was referred was composed of Van Koughnet, Ross, Prince, Boulton, Murney and Patton. It seems to have passed without much opposition in the Council. Being received by the Assembly, May 4, it was supported in that

Chamber by Attorney General Macdonald and Solicitor General Smith. The third reading (with certain amendments) was had May 16, when a division was called for: 72 voted for the Bill, 7 against: in the latter list, the name of only one Upper Canadian lawyer appears. A few trifling amendments were made in the Council and concurred in by the Assembly.

There can be no possible doubt that this Bill was promoted by the Law Society: and that, with a view to improving the standing of the "lower branch of the profession." It is not without interest to note that early in the session a motion had been made in the Assembly that "all British subjects of good character and who have the requisite skill and ability shall have the right to practise in all the Queen's Courts of Law after due legal examination as to their qualification": this received 11 votes against 63 in the negative. Of these 11, 3 voted against the new Bill, one voted for it and 7 did not vote—there were no lawyers in the 11. The leader in the attempt to make the profession wide open, was the well-known William Lyon Mackenzie, who represented Norfolk in the Assembly: he believed that "the career should be open to the talents," and desired to make the law the same as in some of the United States.

As showing the state of the profession about the time of the passing of this Act, it may be mentioned that the earliest available list after the passing of the Act shows that of the practising lawyers in Upper Canada, 518 in all, 147 had not been called to the Bar, nearly 30% (Canadian Almanac for 1859, pp. 45-47.)

It does not come within the limits of time I have prescribed for myself to speak of the subsequent changes, but it may be mentioned that of the 1870 on the list at present, all but 71 (less than 4%) are Barristers and all but 42 (less than 2½%) are Solicitors.⁴⁰

The history of the profession will show the variations from time to time of public opinion and the experiments

which have been tried. The story may be thus tabulated:

BARRISTERS.

1792—Adoption of French Canadian System, all for five years under articles, examined before the Court and called both as Advocates and Attorneys.

1797—Must be five years on Books of Law Society and the same time in Barrister's Chambers. No examination. The five years requirement, except in special cases, still continues.

1818—Examination for admission to the Society on one of Cicero's orations, etc., before the Benchers.

1825—Examination on Latin Prose and Poetical Authors, and in the Mathematics before the Benchers.

1828—Students must keep four Terms in Court.

1831—Formed classes for educative purposes.

1832—And especially one at Osgoode Hall.

ATTORNEYS (OR SOLICITORS).

1792—Adoption of French Canadian System, all for five years under articles, examined before the Court and called both as Advocates and Attorneys.

1797—Must have been under Articles five years, and three years on Books of the Society. No examination. The five years requirement, except in special cases, still continues.

1818—Examination for admission to the Society on one of Cicero's orations, etc., before the Benchers.

1822—Attorneys, no longer members of the Law Society. No examination required at any time.

1857—Must attend two terms in Court and be examined and certified by the Law Society.

NOTES TO PART I.

¹While preparing at their request an address on the Legal Profession of this Province for "The Chicago Society of Advocates," to be delivered at their inaugural meeting, November 9, 1914, I was led to make certain historical enquiries: I have thought that some of the results of these enquiries may not be without interest to the profession in Ontario.

²This Proclamation will be found in full in the Report of the Bureau of Archives for Ontario for 1906, pp. 169-171. The Reports of that Bureau are of extreme value and interest; but are too little known and appreciated. Clarke became in 1797, Sir Alured Clarke, K.B. As to the formation, &c., of the Province, see note 8 post.

³A well known instance of this was Lord Russell of Killowen, who practised for some time in the lower order of the profession with great success—he had his name struck off the Roll and was called to the Bar: his success was phenomenal and is a matter of history.

So far as I can discover, only one Attorney in Upper Canada has had his name struck off the Roll as such—Mr. Henry Corry Rowley Becher, of London, U.C., who was both Barrister and Attorney: he wished to be called to the English Bar.

⁴See the address in Chicago already spoken of.

⁵In the list (admittedly imperfect) in the office of the Secretary of State at Ottawa of those admitted as *Avocats* from 1765 to 1784, both inclusive, 13 have English and 13 French names. The well-known William Grant, afterwards Sir William Grant and Master of the Rolls in England, was one of the former. See the list in an exceedingly interesting brochure, "*L'Ancien Barreau au Canada* * * * par J. Edmond Roy, Notaire à Levis, Montreal, * * * 1897" pp. 72-91 incl.

⁶"*L'Ancien Barreau au Canada*," pp. 62-66 incl.

⁷The Proclamation (July 24th, 1788) of Lord Dorchester (Sir Guy Carleton) establishing these four Districts, Lunenburg, Mecklenburg, Nassau and Hesse, is to be found in the Report of the Ontario Bureau of Archives for 1906, pp. 157, 158: the Courts are referred to in the Dominion Archivist's Report for 1907, pp. 629 sqq. See the Ordinances, pp. 443 sqq., &c., &c.

⁸The division of the Province of Quebec into two Provinces, *i.e.* Upper Canada and Lower Canada, was effected by the Royal prerogative—see 31 Geo. III., c. 31, the celebrated Canada Act. The message sent to Parliament expressing the Royal intention is to be found copied in the Ont. Arch. Report for 1906, p. 158. After the passing of the Canada Act, an order in Council was passed August 24th. 1791 (Ont. Arch. Rep. 1906, pp. 158 sqq.)

dividing the Province of Quebec into the two Provinces and under the provisions of sec. 48 of the Act directing a Royal warrant to authorize "the Governor or Lieutenant-Governor of the Province of Quebec or the person administering the government there, to fix and declare such day as they shall judge most advisable for the commencement of the effect of the Legislation in the new Provinces, not later than December 31st, 1791." Lord Dorchester (Sir Guy Carleton) was appointed September 12th, 1791, Captain General and Governor in Chief of both Provinces, and he received a Royal warrant empowering him to fix a day for the legislation becoming effective in the new Provinces (see Ont. Arch. Rep. 1906, p. 168). In the absence of Dorchester, General Alured Clarke, Lieutenant-Governor of the Province of Quebec, issued, November 18th, 1791, a proclamation fixing Monday, December 26th, 1791, as the day for the commencement of the said legislation. (Ont. Arch. Rep. 1906, pp. 169-171.) Accordingly, while technically the new Province was formed by Order in Council August 24th, 1791, there was no change in administration until December 26th, 1791.

⁹Those who certainly received a licence were, 1, David William Smith (afterwards Sir David William Smith, Bart., a copy of whose licence is to be found in King's Bench Term Book No. 2); 2, Richard Barnes Tickell; 3, Angus McDonell (Macdonell); 4, James Clark; 5, Allan McLean; 6, Timothy Thompson; 7, Robert Isaac Dey Gray (Solicitor General); 8, Jacob Farrand (who at a meeting of the Law Society holden 13th April, 1801, E. T. 41 Geo. III., describes himself as licensed pursuant to and by virtue of the Act—see Records of Law Society, vol. 1, p. 6); 9, Nicholas Hagerman; 10, William Dummer Powell, Jr.; 11, Alexander Stewart; 12, Davenport Phelps (who did not sign the Roll although his name is entered thereon); 13, William Birdseye Peters; 14, Samuel Sherwood. To these probably should be added 15, Bartholomew Crannell Beardsley, who was certainly admitted on the Roll and in practice before the Law Society's Act, as he took part in organizing the Law Society of Upper Canada and his name upon the Roll has not opposite to it, the word "admitted" specially applied to those who were admitted as Attorneys under the Ordinances of 1785 or the Law Society's Act of 1797. John White the Attorney General, who took nearly twice as many motions in the Court of King's Bench as any other practitioner during the years which elapsed before the Law Society's Act came into force, did not sign the Roll. Of course, he came within the exception of the Ordinance of 1785 "Unless such person shall have been already called to the Bar or intitled so to be and to practise as an Advocate or Attorney in some Court of Civil jurisdiction within some part of His Majesty's dominions" (Art. 1

of the Ordinance of 1785). White came out in 1792 and had been called to the Bar in England before 1785. Walter Roe already mentioned, who also practised, came within the provisions of sec. 4 of the Act and did not require a licence. Christopher Robinson did not sign the Roll of Attorneys but he began practice in the King's Bench as early as May 1, 1795: no record appears of his having been admitted either in the old Province or either of the new ones under the Ordinance of 1785, and he does not seem to have been called to the Bar before coming to Canada. It is probable that he received a licence thus making up the number. Charles J. Peters, the only remaining practitioner whose name appears in the King's Bench records before the Law Society's Act, was admitted 4th June, 1796, under the provisions of the Ordinance.

The value of the money mentioned can be ascertained by remembering that the pound is not the pound sterling unless so expressed—it is the pound currency, *i.e.*, Halifax, Quebec, Canada or Provincial Currency, in which the pound is \$4, the shilling 20 cents, etc. This was in use for more than half a century after the establishment of the Province.

¹⁰See the Quebec Act, 1774, 14 Geo. III., c. 85, s. 7 (Imp.).

¹¹The institution of a Court of Equity was never lost sight of: it seems to have been contemplated from the beginning and was the subject of much and animated discussion. But such a Court did not come into existence till 1837, when for the first time in our legal history the "Solicitor" appears.

¹²That this was the interpretation is clear from the preamble to the Act of 1807, 47 Geo. III., c. 1 (U.C.), "By law no person can be admitted and enrolled as an Attorney of His Majesty's Court of King's Bench unless such person shall have been bound by contract in writing to serve as a clerk for and during the space of five years."

¹³The records were burned by the Americans in the War of 1812 when they took York (Toronto)—the burning of the Public Buildings and Records was a disgraceful act of vandalism, wholly unnecessary, wholly useless. Little is heard of this or of the burning of Port Dover and Niagara, though no American historian fails to characterize as barbarous the burning of Alexandria and part of Washington, which was done explicitly in retaliation for the burning of Canadian towns.

Of most of the records, copies have been obtained from London, the Colonial office having received from the Colony a copy of the Proceedings of its Parliament from time to time: the copy of the Proceedings for 1797 and some others cannot be found and it is conjectured that they may have been lost in transit either by capture or by shipwreck.

¹⁴The exceedingly interesting story of the Inns of Court and Inns of Chancery may be read in Herbert's "Antiquities of the Inns of Court and Chancery," 1804 London: Blackstone refers to them, Bk. I., pp. 25 sqq: see also Bk. III., pp. 26 sqq.

¹⁵The ten who were present, the five who were not but received the degree of Barrister-at-Law, and the four who did not receive this degree are named and some account is given of them later.

¹⁶I have carefully considered this Rule No. 7 in the light of all the surrounding circumstances and of its subsequent operation: and I am unable to discover any other objection to it from any point of view.

¹⁷Those present were: 1, John White, Attorney General; 2, Robert Isaac Dey Gray, Solicitor General; 3, Angus Macdonell, Clerk of the Legislative Assembly; 4, James Clark; 5, William Dummer Powell, Jr., son of Mr. (afterwards Chief) Justice Powell; 6, Alexander Stewart, and 7, William Weekes, who was the only other Barrister in addition to the original fifteen, as yet called by the Society. Some account of these is given later.

¹⁸Chief Justice Elmsley and Justices Powell and Allcock.

¹⁹He was shot in a duel by Mr. Small, Clerk of the Executive Council, whose wife White had traduced. An account of this and other duels will be found in 35 Canadian Law Times, p. 726 (1915). (See post pp. 151, 152.)

²⁰The Chief Justice was an Englishman called at the Inner Temple (not the Middle Temple as stated in Read's "Lives of the Judges," p. 43): Mr. Justice Powell was born and partially educated in law at Boston, but went to England on the Revolution breaking out and was educated in London for an English Barrister. On William Grant (afterwards Sir William Grant, M.R.) leaving the Canadian Bar to practise in England, Powell not yet called, came to Canada and received a license to practise. On one of his visits to the mother country he was (in 1779) called to the Bar at the Middle Temple. From 1789 till 1794 he was Judge of the Court of Common Pleas in the District of Hesse and when the Court of King's Bench was constituted in 1794, he was appointed a Judge of that Court. He was equally familiar with French and English Law, the French and English language, and has never received proper recognition for the great service he rendered to the jurisprudence of Upper Canada.

Mr. Justice Allcock (not "Alcock" as it is frequently written) was called to the Bar in Lincoln's Inn.

²¹There are a very few apparent exceptions to this statement but in most cases they are only apparent: there are, however, a few real exceptions which come under special provisions.

One of the first apparent exceptions is that of William Z. Cozens, an Attorney admitted November 18, 1820. The facts are as follows:—at a meeting of the Benchers of the Law Society held at the Chambers of the Attorney General, D'Arcy Boulton, in Trinity Term, 57 Geo. III. (1817), Henry John Boulton gave notice that in the following Term would be proposed for membership Henry Cassady, articled to Daniel Washburn, and Wm. Z. Cozens, articled to Jonas Jones. In Trinity Term, 59 Geo. III. (1819), Henry Cassady presented himself, paid his £5 admission fee, was examined and admitted to the Roll, but his request that his admission be dated as of T. T., 57 Geo. III. or earlier than T. T., 59 Geo. III. was refused, "no reason appearing to the Society for his not having sooner presented himself for admission." No further entry appears of Cozens, but it is extremely likely that he was in fact admitted to the Law Society as a Member and the formal entry on the Books overlooked, as happened not infrequently. As Cozens did not become a Barrister, the omission was not discovered, as was the omission in other instances when the student-of-the-laws desired to be called.

The entry in the Term Book K.B. No. 7, Saturday, 18 November, 1820, Mich. Term, 1 Geo. IV., is as follows:

"William Z. Cozens produced his articles of agreement of his having served upwards of three years with Jonas Jones of Elizabethtown, Esqr., as an Attorney he took the oaths required by law and was admitted an Attorney of this Honorable Court."

Mr. Jones (afterwards Mr. Justice Jones of the King's Bench) had been made a Bencher the preceding Easter Term, and it is not at all probable that there was any real irregularity—but only an omission to enter the name of Mr. Cozens in the Books. (See Note 22 post.)

Mr. Cozens is the only student whose name does not appear on the Law Society's Roll at all: there are several who were regularly admitted but whose names were not entered till some years afterwards and some were prevented by the war from being admitted. The Benchers were forced for some time to intermit their regular meetings and the students so prevented from being admitted were relieved by Statute.

²²An examination of the Term Books of the Court of King's Bench and of the Rolls of the Court and of the Law Society discloses an apparent exception in three cases.

The first record in the Term Books of swearing in and admission of an Attorney is of that of John Lowe Farrand, admitted Jany. 13, 1806, Term Book No. 2, p. 298: thereafter in some cases the admissions are entered in the Term Book but not invariably so. Francis X. Rocheleau admitted November 14, 1820, is the first of whom it is said "having served upwards of three years," Term Book No. 7. The same is said the same day of George S. Jarvis, and on the 18th November of William Z. Cozens. But January 8, 1821, in Term Book No. 7, appears the name of Robert Dickson and that he served upwards of five years under articles: so in the case of James Edward Small, January 13, 1821, and Andrew Norton Buell, November 5th, 1821, the only others whose term of service is mentioned. I think there is a mere mistake in mentioning three as the number of years served by the three persons mentioned in Term Book No. 7: or possibly the Statute of 1815, 55 Geo. III. c. 3 (U.C.) may account for only three years being actually served, if such was the fact.

The real exceptions were those licensed under the Acts of 1794 and 1803, and practitioners who came from the mother country or Lower Canada.

Of the Attorneys who in this period did not stand on the Books of the Society for three years there were

Those licensed under Act of 1794.....	11
Those licensed under Act of 1803.....	1

(Four others were licensed but did not sign Attorneys' Roll)

English and Scottish practitioners	2
Lower Canadian	1
Admitted under special Act of Parliament.....	1.
	<hr/> 16

The particulars of the last mentioned are as follow:—

John Boswell petitioned the Legislature for a Special Act that he might be admitted as Barrister and Attorney: he was an Englishman and had been admitted an Attorney of the Court of King's Bench in England in 1797.

A Bill was introduced for that purpose in the Assembly, January 8, 1823; the Benchers meeting in the Room of the Speaker of the Assembly resolved that it was not expedient that he should be called to the Bar "but that from the peculiar circumstances of his case, they see no objection to his being an Attorney should the Legislature deem it expedient." They also directed one of their number, the Solicitor General, Henry John Boulton, to apply to the Legislative Council to be heard on behalf of the Law Society against the passing of the pro-

posed Bill: Min. Bk. No. 2, p. 73. The opposition was in vain: the Bill passed (1823) 4 Geo. IV. c. 33: in Easter Term of the same year Boswell gave notice of application to be admitted as a Barrister (p. 77): he did so apply (p. 79), but his application stood over for a more full meeting of the Society (there were only four members present): a Special meeting was called for January 21, 1825, and was attended by nine Benchers who decided that he could not "be called to the Bar before the expiration of his five years' entry on the Books."

At a meeting held at the Chambers of the Treasurer, Dr. William Warren Baldwin, E.T., 6 Geo. IV.. April 30th, 1825, at which were present the Treasurer, Solicitor General Boulton, Thomas Taylor (the Reporter), J. B. Macaulay and Dr. John Rolph, "Doctors differed" and the Bench passed, over the Treasurer's dissent, a Resolution "that the Society feel inclined under the peculiar circumstances of Mr. Boswell's case to admit him to the Bar upon his presenting himself and paying his fees, but that in consenting at length so far to relax their former resolution they feel it proper to express their fixed determination to resist all future examinations for admission contrary to the existing Laws of the Province."

The Society thus having saved its face, Mr. Boswell, June 22, 1825, T.T., 6 Geo. IV., presented himself and was called to the Bar.

The Act had made it discretionary for the Court of King's Bench to admit Mr. Boswell as an Attorney—and for the Society to admit him as a Barrister and to introduce him to the Court as such. The Court seems to have admitted him as Attorney April 24, 1823, although no record appears in the Term Book (No. 8).

Boswell was of Scottish descent and distantly related to the biographer of Dr. Johnson: he came to Canada in 1822 and settled in Cobourg: his son, George Morss Boswell, was of Counsel for some of the "Rebels" in 1838, and afterwards Judge of the County Court of the United Counties of Northumberland and Durham.

²³These three were Francis Xavier Rocheleau, William Z. Cozens and Isaac B. Sheek, Nos. 42, 44 and 46 on the Attorneys' Roll. I have not taken any account of Attorneys who were also "Advocates."

²⁴These are Henry John Boulton, who was articled to his father, Solicitor General (afterwards Mr. Justice) Boulton, but who does not seem ever to have been admitted as an Attorney; Daniel Farley, articled to Daniel Hagerman, and Joseph Allan McLean, articled to Allan McLean. These are Nos. 42, 83, and 106 on the Law Society's Common Roll, Nos. 50, 74 and 91 on

the Law Society's Barristers' Roll, and Nos. 22, 49 and between 47 and 48 on the King's Bench Barristers' Roll.

There are also two English Barristers, one from Lower Canada, and a number licensed under the Acts of 1794 and 1803. Add to these Walter Roe, in practice before the Province of Upper Canada was constituted.

²⁵We shall see in another connection that as early as 1820 it was proposed to erect a building for the use of the Society to be called "Osgoode Hall."

²⁶This Rule was probably due to Dr. William Warren Baldwin, who always took a deep interest in the education of the profession. The matter will receive detailed treatment in another chapter.

The Rule does not appear in the Book of Proceedings but is to be found in the Book of Rules.

²⁷These were 1, Dr. William Warren Baldwin of York; 2, William Dickson of Niagara; 3, D'Arcy Boulton of Augusta; 4, John Powell of York, and 5, William Elliott of Sandwich, all admitted as members of the Law Society and created Barristers-at-Law in Hilary Term, 1803.

D'Arcy Boulton was the only one of the five to sign the original Roll of Attorneys, January 22, 1803: he had been admitted as a Student-at-Law at the Middle Temple in 1788 but apparently was not "called."

A Barristers' Roll in and for the Court of King's Bench was now provided for the first time, and the other four signed it (a space being left for Boulton's name). He did not sign this Roll, but curiously enough his son D'Arcy Boulton, Jr., was the first to sign it (as No. 5) after the four already referred to.

The Roll is called the Barristers' Roll, but the charge and oaths are for both Barrister and Attorney:—"You are called to the Degree of a Barrister and to that of an Attorney." This continued to be the case in the "Barristers' Roll" until the Sixth Skin, beginning August 7, 1837—where the applicant was "admitted and sworn a Barrister" only, it was so entered on the Roll.

Some account of the Rolls will be given in a later chapter.

²⁸This was Richard Philips Hotham (No. 76 on the Attorneys' Roll: No. 111 on the Common Roll of the Law Society).

²⁹Those in favour of the resolutions passed seem to have been the Attorney General (Henry John Boulton), Dr. William Warren Baldwin, Dr. John Rolph, Thomas Taylor and James E. Small: opposed were the Treasurer (George Ridout) and Robert Baldwin.

³⁰The division list is not given: but the adoption of the Report, &c., was moved by Mr. Simon Washburn.

³¹The Judges were John Beverley Robinson, C.J., Levius Peters Sherwood and James Buchanan Macaulay, JJ.

³²The reason and effect of this Rule will be discussed in another chapter.

³³The following is a statement of the admissions, &c., from 1823:—

Year.	No. Attorneys.	Not on Books.	Per-centage.	Not Barristers.	Per-centage.	Barristers Called.	Not Attorneys.	Per-centage.
1823	7	0				9	1	11+
1824	6	0		1	17—	6	0	
1825	7	0		0		8	0	
1826	2	0		0		4	0	
1827	11	0		0		10	0	
1828	15	0		0		18	0	
1829	10	0		0		7	0	
1830	12	0		0		14	0	
1831	None called or admitted during this year (<i>annus mirabilis</i>).							
1832	11	1	9+	3	27+	8	1	12+
1833	16	2	12+	4	25	13	0	
1834	16	2	12+	3	18—	8	1	12
1835	17	2	12—	3	18—	13	0	
1836	14	0		6	36—	14	3	22—
1837	17	5	30—	7	41+	18	2	11+
1838	20	3	15	5	25—	14	3	21+
1839	30	4	13+	5	17—	21	0	
1840	23	3	13+	6	26+	18	2	11+
1841	17	2	11+	3	18—	9	0	
1842	26	1	4—	1	4—	26	0	
1843	15	3	20	3	20—	19	0	
1844	25	2	8	5	20	15	2	13+
1845	27	2	8—	6	22+	19	0	
1846	27	6	22+	9	33+	17	1	6—
1847	36	5	13+	7	19+	34	1	3—
1848	40	11	28+	18	45	24	1	4+
1849	31	10	32+	11	35	26	1	4—
1850	30	9	30	11	37—	17	1	6
1851	36	13	37—	14	39—	21	1	5—
1852	49	10	20+	16	33—	24	0	
1853	40	11	28—	16	40	24	1	4+
1854	30	4	13+	12	40	32	1	3+
1855	39	6	15+	13	33+	35	3	9—
1856	31	9	30—	14	45+	16	2	12+

³⁴In 1829 the Law Society expressly disclaimed the right or power to deal with an Attorney as such. Upon a complaint made against C.R. they referred the complainant to the Court of King's Bench. In Easter Term, 10 Geo. IV., May 2, 1829, a complaint was made to the Society against C. R., a Barrister and Attorney, for misconduct in business conducted by him in his capacity of Attorney; and the Society resolved that Attorneys were not amenable to the Society but were to the Court of King's Bench whose officers they were, for any alleged malpractice as Attorneys; the Society could not act but referred the complainant to the Court.

There is no need here to revive an old scandal. C. R. is No. 109 on the Common Roll and No. 92 on the Barristers' Roll of the Law Society: No. 84 on the Attorneys' Roll and No. 47 on the Barristers' Roll of the Court. Anyone interested may easily find his name.

³⁵The two Barristers who were not Attorneys were James Christie Palmer Esten (an English Barrister, afterwards Vice Chancellor), and (Hon.) William Cayley.

³⁶The Court of Chancery had been constituted in 1837: all practitioners of the lower branch of the profession practising in that Court were as such called solicitors. The Act (1837) 2 Wm. IV. by sec. 12 provided that "all Barristers and Attornies admitted to practise in the Courts of Common Law in this Province shall be permitted * * * to practise in the Court of Chancery in this Province as Counsel or Solicitor, respectively." Authority was given to the Vice Chancellor by sec. 22 to admit Solicitors of the High Court of Chancery in England or Ireland (not exceeding six) as Solicitors in the Provincial Court of Chancery. I do not find that this was ever acted upon.

³⁷The Bill was introduced by Col. John Prince, who had been made Barrister and Attorney under the authority of an Act of the Legislature passed explicitly in view of his valuable services during the Rebellion of 1837-8. See (1838) 1 Vic., c. 42 (U.C.). The motion to read the first time was seconded by Mr. Henry Sherwood afterwards Solicitor General for the Province.

³⁸The numbers are not correctly given in the copy of the Report in the Minute Book of the Society, vol. 2, pp. 311, 312; but an examination of the Rolls of the Court shows that there were 22 (not 30 as the copy has it) admitted that year together with John Ford Maddock, admitted under the authority of the Act 3 Vic., c. 29 (U.C.). Six of the Attorneys admitted, failed to become Barristers at any time: and seven others were not called

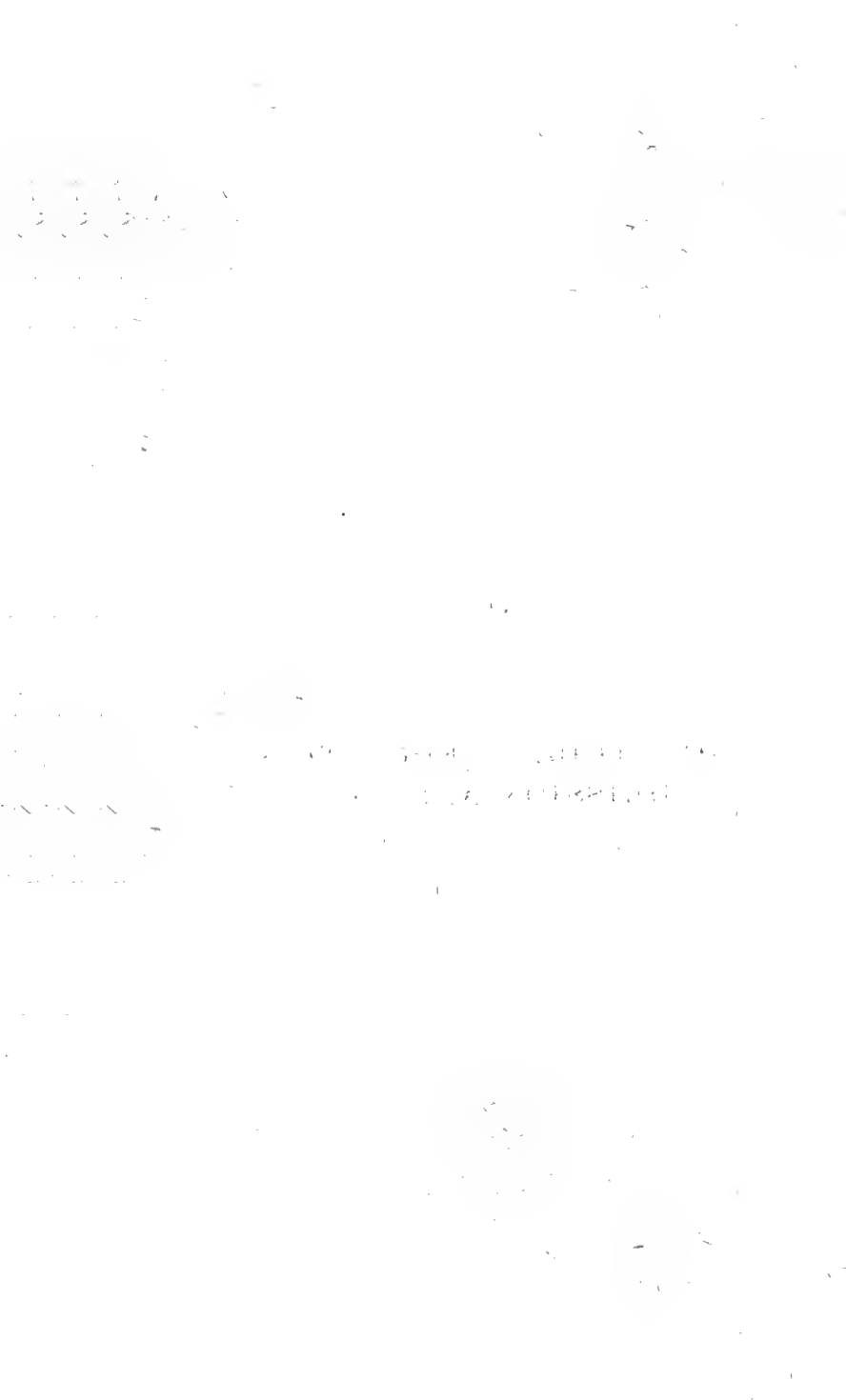
till later years, so that of the Attorneys practising, 132 were not Barristers: in 1840 of the 18 Barristers called, 2 did not become Attorneys, making 5 only who were Barristers and not Attorneys. The names of these two are John Delmage and Henry Allen.

³⁹These examinations will be considered in a future chapter.

⁴⁰From a memorandum kindly furnished me by Mr. Bell, Secretary of the Law Society—most, if not all, of the Barristers have been Solicitors, and most, if not all, the Solicitors will become Barristers.

PART II.

**THE STUDENT, EDUCATION,
ADMISSION AND CALL.**



THE STUDENT, EDUCATION, ADMISSION AND CALL

CHAPTER VI.

THE STUDENT, EDUCATION, ADMISSION AND CALL BEFORE THE ACT OF 1822.

During the first period, the student articulated to an Attorney, &c., received such instruction as his master chose to give him, and picked up law and practice as he might in his office. Before he could become a practitioner on his own account, he had to be examined by some of the most able Barristers or Attorneys in the presence of the Chief Justice of the Province or of two or more Judges of the Courts of Common Pleas, and such Chief Justice or Judges had to approve.

In Upper Canada there is no record of any such examination—the first Chief Justice, Osgoode, never sat in the Court of King's Bench; and the Courts of Common Pleas, lasting as they did till 1794, do not seem ever to have seen the spectacle of the examination of a student.

Of the second period, the same may be said: the one person admitted to practise without a licence before the Law Society's Act, was admitted after Osgoode's departure from the Province and before the appointment of his successor Elmsley.¹

When the Law Society was organized under the Act of 1797, 37 Geo. III., c. 13, it proceeded to frame Rules and Regulations for its governance.

The Statute gave the name "Student of the Laws" to those who were admitted on the Books of the Society: and in view of the provisions that those who were to

become Barristers must be five years on the Books, and those who were to become Attorneys, three, it is obvious that this statutory title includes both "Students-at-law" and "Articled Clerks."

There were no students admitted to membership in the Society before the coming into force of Rule 7 already discussed.²

On Monday, April 13, 1801, the first student was admitted to the Books of the Society.³

The Student passed no examination either before entering into articles or before being admitted to the Society: the sole judge of his "education, principles and habits of life" was his master or intended master.⁴ Nor was there any provision for the education of the student: he must rely upon what his master could and should teach him and upon what he could pick up. But before admission he must pay the sum of £10 (\$40): and notice of application for admission must have been given the previous term (⁴ *ad fin.*).

When the student had been three years on the Books and had completed his five years of service under articles, he might present himself to the Court of King's Bench and be admitted and sworn in as an Attorney, paying a trifling fee to the Clerk.

When he had completed his five years on the Books of the Society, he would apply to be called, pay £20 (\$80) enter into a Bond to pay £5 (\$20)—almost immediately reduced to £2 10s. (\$10)—per annum so long as he remained a member of the Society; and he was called as of course without examination or enquiry into his qualifications.

On January 11, 1808, the fees were made £5 for each existing Barrister, £5 on admission on the Books and £5 on Call.

In 1818 (Hilary Term, 58 Geo. III.) a rule was passed that no person should be admitted a member unless he should declare to the Society upon his honour

that his application was to enable him to become a resident practitioner; but this does not seem to have received the sanction of the Judges. No trace of such a declaration appears in the early Summary of Provisions relating to Admission of Members, in the Form of Petition prescribed, in the Book of Rules or in the Minutes of the Law Society.

In Trinity Term, 59 Geo. III., 1819, Barristers were required to pay two guineas^s annually: students £10 on admission.

In Hilary Term, 60 Geo. III. 1820, was passed a Rule in the following terms: "18th. Whereas the present state of this Province affords the means of obtaining that education which is necessary to the Liberal study and Practice of the Profession of the Law and which will secure to the Province a learned and honorable Body to assist their fellow subjects as occasion may require and to support and maintain the constitution of the Province which valuable objects the Law Society of Upper Canada was expressly formed to secure. It is resolved by the Society that after this Term all persons presenting themselves to the Society for their approbation previous to their admission upon their Books, shall be required to give a written translation in the presence of the Society of a portion of one of Cicero's Orations or perform such other exercise as may satisfy the Society of his acquaintance with Latin and English composition and that no person who cannot give these proofs of a liberal education shall hereafter be admitted upon their Books."⁶

Before this Rule the student "presented himself to the Society for admission and paid his fees" whereupon he was admitted into the Society: thereafter he "presented himself to the Society for admission and * * * satisfied the Society of his qualifications."

This then was the condition of the student at the end of the third period when the Act of 1822 was passed. He must be articled (or intended to be articled), pass an examination on the subject prescribed, pay his fee:

thereafter, there was no supervision over him or attempt to educate him by the Society and he passed no more examinations.

The students were not blind to the advantages of education in and discussion of law. Some time before 1821 an Association was formed in Toronto called the "Junior Advocates Society," composed of law students—in that year this Society merged into—or rather resolved itself into—the "Advocate Society," composed almost wholly of law-students (only one Barrister was on its Roll of Members); it was occupied with Moot Courts, discussion of questions of law, &c. It lasted from April 2, 1821, to June 20, 1826, when it went to pieces on the Call to the Bar and resignation of its most active and capable member, Robert Baldwin. The minutes of its proceedings are kept at Osgoode Hall: from these it appears that the students at Kingston formed a similar Society in 1822, and that all the members of the Society itself did not reside in Toronto, some living in Kingston, Port Hope and Hallowell (Picton).

CHAPTER VII.

THE STUDENT, EDUCATION, ADMISSION AND CALL AFTER THE ACT OF 1822.

The Law Society having got rid of the Attorney by the Act of 1822, was not slow in raising the standard. In addition to enforcing with the utmost rigour the requirement that the Student should be occupied with nothing else than law during his years of service⁷ the Society in Trinity Term, 6 Geo. IV., July 1, 1825, passed the following Resolution:—

"Whereas no small injury may be done to that portion of the youth of the country, intended for the profession of the Law, by confining their examination to

Cicero's Orations and it is advisable further to promote the object of the 18th Rule of this Society passed and approved in Hilary Term, 60th Geo. III. It is unanimously resolved that in future the Student on his examination will be expected to exhibit a general knowledge of English, Grecian and Roman History, a becoming acquaintance with one of the Ancient Latin Poets as Virgil, Horace or Juvenal—and the like acquaintance with some of the celebrated prose works of the ancients such as Sallust or Cicero's Offices, as well as his Orations or any author of equal celebrity which may be adopted as the Standard Books of the several District Schools—and it will also be expected that the student will show some reasonable portion of mathematical instruction."

It does not appear that this Rule was laid before the Judges—certainly it did not meet with their approval, it was not acted upon and at a meeting January 9, 1827, Hilary Term, 7 Geo. 4, when the Treasurer, Dr. Baldwin, called the attention of Convocation to it, "the gentlemen present seemed generally not to approve of enforcing or following up that Resolution at present."⁸

In 1828, January 11, Hilary Term, 8 Geo. IV., Convocation decided that all students to be thereafter entered should keep at least four terms during their five years' entry, at York the seat of the Court of King's Bench and of the Society—this Rule, No. 21, was approved the following day and had the effect of compelling all students-at-law to be in residence in York for four terms: we shall see in a later chapter that many of these took rooms in Osgoode Hall.

The Rule was good so far as it went; but the object was not fully attained of compelling the student by attendance at the Court in Term to learn the practical work of Court motions. Some of the students attended only part of the Term: accordingly in 1831, July 1, Trinity Term, 1 and 2 Wm. IV., a new Rule was passed, approved the next day and providing that the student

must report himself personally and in writing, to the Treasurer on the first and last days of each Term and have his name entered in a Book kept for that purpose—in default of which he was not to be allowed his Term. This Rule was rigidly enforced and the second day of Term was not considered the equivalent of the first, as students found to their sorrow. Before this, May 3, 1828, it was provided that the student must, in lieu of the former certificate from the master to whom he was or was to be articulated, produce a certificate upon honour of a Benchers or two Barristers “that the person so applying for admission is personally known to him or them and that such applicant is in his or their opinion qualified by principles, education and habits of life to become a member of the Society,” Rule 22.

In 1831, July 2nd, Trinity Term, 1 & 2. Wm. IV., a Rule was passed, approved November 19, 1831, providing “That from and after Michaelmas Term next, no person shall be admitted on the Books of the Society as a student-at-law or be called to the Bar unless he shall be presented to the Convocation by some Barrister and shall be found upon full and strict examination in open Convocation by the Benchers then present to be by habits, character and education duly qualified to be admitted in the Books as a student-at-law or to be called to the Bar respectively * * * and provided also that no person shall be presented or examined unless notice in writing containing the name, addition and family residence shall have been given in open Convocation in the Term next immediately preceding * * *.” The rule also provided that no one could be called to the Bar when under articles.⁹

Here we have for the first time an examination for Call in addition to the matriculation examination.

A “Standing Order” was forthwith passed that in conducting examinations for admission or Call, no questions should be asked of the candidates except through the Treasurer or some Benchers named by him for the

purpose—the intending Barrister to present himself for Call invested with his robes and bands.

Accordingly the student desiring to be admitted must have notice given of his presentation the preceding Term—it was no longer necessary to have a certificate from master, Benchers or other Barristers—and attend in open Convocation to be examined. The curriculum was not as yet formally changed, but in Easter Term, 2 Wm. IV. 28 April, 1832, Drs. Baldwin and Rolph with Mr. Taylor were appointed a Committee to prepare a list of such books as they should think were required for conducting the examination and to buy such books for the Society.

In Hilary Term of the same year, all members of the Society who had not received their degree (i.e., all Students-at-Law) were directed to form themselves into classes for the reading of Essays, disputation of points of law either as cases or questions, discussion of general, constitutional and international law, &c. &c. The class was to have a Barrister as President appointed by Convocation. One of these classes was the Trinity Class which held its meetings at Osgoode Hall paying £2 10s. (\$10) for the privilege. This of course was just a way of making the students educate themselves and each other: but it had no great success.

In Michaelmas Term of 3 Wm. IV. November 16, 1832, the examination of students was provided for by General Order. Those who passed in as students were divided into Optimes, Senior Class and Junior Class. The Junior Class were to be examined in the English and Latin languages, in Mathematics and Geography or History; the Senior Class in the English and Latin languages, Geometry, Algebra, Moral Philosophy, or the Greek language, Astronomy and History; the Optimes in the English, Latin and Greek languages, in Geometry, Algebra, Moral Philosophy, Metaphysics, Rhetoric and the Belles Lettres, Geography, Astronomy and History. No advantage was derived from the higher standing

except that the grade was stated in the certificate of admission granted to the successful student.

If the "Optime" failed to pass he fell into the Junior Class, as did the unsuccessful aspirant for the Senior Class. The examination for call was similar to that passed on admission and moreover the candidate was examined "in the Principles of the Law of England, in the Science of Special pleading, the Law of Evidence, the Law relating to Trials at Nisi Prius and the Practice of the Courts."

Thereafter the records of Convocation are full of instances of students being examined and passed into one or other of the Classes, Optime, Senior or Junior: there are also many failures recorded, some of the unsuccessful being seriously taken to task by the Treasurer, some coming up again and passing, some never returning. I find no instance of an intending Barrister failing on his examination for Call.

The annual fee to be paid had been reduced, 1831 Trinity Term, 1 & 2 Wm. IV., to 11s. 8d. (\$2.34) per Term and was in February, 1833, further reduced to 2s. 6d. (50 cts.) per Term, i.e., from \$9.33 per annum to \$2.00 per annum, the present Barrister's fee. It will be convenient here to note that in 1823, the Statute 4 Geo. IV., c 3, which provided for the Report of Cases in the King's Bench, directed that each Attorney should pay to the Law Society to go towards the Reporter's Salary and before the Attorney could secure his annual certificate to practise, a sum not more than four guineas to be fixed by the Law Society: the Law Society fixed the annual sum at £1 5s. (\$5.00). This is now \$15.00.

CHAPTER VIII.

THE STUDENT, EDUCATION, ADMISSION AND
CALL—SPECIAL EXAMINER.

In Trinity Term, 5 & 6 Vic. June 18, 1842, it was decided that the examination for admission should be conducted by some one competent person under the direction of the Benchers: and an officer to be called the examiner was to receive from each candidate 20s. (\$4.00).

In Michaelmas Term, 6 Vic. Aug. 2, 1842, Hugh N. Gwynne, B.A. (T.C.D.) was appointed Secretary, sub-Treasurer and Examiner for Matriculation out of a number of applicants—the previous Secretary, James M. Cawdell, had died a short time before. Thereafter these examinations were conducted by Mr. Gwynne. In the same Michaelmas Term, he was asked to report on subjects for examination, and November 14th, 1842, Hilary Term, 6 Vic., he recommended the following:—

Optime Class. The Hecuba of Euripides, the first 12 Books of Homer's Iliad, Horace, Sallust, Euclid (1st, 2nd, 3rd, 4th, 6th and 11th Books), Algebra, Trigonometry, Bridge's Mechanics, Astronomy, History and Geography—and in Moral Philosophy, Metaphysics, Rhetoric, the Belles Lettres and the English language.

The Senior Class: The *Analecta Graeca Minora* (or if preferred, Moral Philosophy), The Odes of Horace, Euclid (1st, 2nd, 3rd, 4th and 6th Books), Bridge's Algebra to the end of Quadratic Equations, Astronomy, English, Roman and Grecian History, Geography and the English language.

The Junior Class: Virgil's Aeneid (Books 1 and 2), Euclid (Book 1), English History or Geography, and the English language.

This curriculum was adopted. I do not think I ever knew of a Matriculation examination differing so

for Honours and Pass—the course for “Optimes” is particularly extensive.

In 1843, August 19, Michaelmas Term, 7 Vic., the course for the Junior Class was changed to Horace Odes (Book 1): Euclid (Books 1, 2 and 3): English History or Geography—an absurdly low standard: in Michaelmas Term, 8 Vic., August 10, 1844, the Third Book of Horace's Odes was added, and in Easter Term, 8 Vic., February 15, 1845, Legendre's Geometrie was allowed to be substituted for Euclid at the instance of Dr. MacNab, Principal of Victoria College, Cobourg. A proposition to add French was made in Hilary Term, 9 Vic. 7 February, 1846, and referred to a committee: it did not carry.

In the same term and year, 10 February, 1846, a new arrangement was made, dividing matriculants into the University Class (including graduates), the Senior Class and the Junior Class—the first two Classes were examined on Homer's Iliad (Book 1), Lucian, Charon, Life or Dream of Lucian, and Timon; Horace, Odes; in Mathematics or Metaphysics at the option of the candidate as follows: Mathematics, Euclid (Books 1, 2, 3 and 4); or Legendre's Geometrie (Books 1, 2, 3 and 4); Hind's Algebra to the end of Simultaneous Equations, Metaphysics—Walker's and Whately's Logic, Locke's Essay on the Human Understanding—also Herschell's Astronomy (chapters 1, 3, 4 and 5) and such works in Ancient and Modern History and Geography as the candidate may have read. These continued substantially the same for many years—beyond the end of the period we are now considering. The term for University Graduates had been reduced to three years in 1837 under 7 Wm. IV. c. 15. The students were examined with much care and a large percentage were rejected.

CHAPTER IX.

THE STUDENT'S EDUCATION—LECTURES.

The education of Students-in-the-Laws was frequently in the mind of Convocation—as early as 1834, June 28, Trinity Term, 4 & 5 Wm. IV., Convocation had laid a petition before the Governor asking whether in the arrangements for King's College soon to be opened, a provision had been made for a Professorship of Law—and asking whether the Government would give reasonable aid to the Law Society if it should establish a Lectureship.

The fact is that the scheme for a Provincial University submitted to the Governor in 1826 provided for a professor of Law and a course in Civil and Public Law: King's College was opened in 1843, and had on its staff a professor of Law. In 1850 the College became the University of Toronto, and the lectures in Law continued till 1853, when the Chair was abolished.¹⁰ The enquiry of Convocation had been induced by a request, May 3, 1834, by the students of the Trinity Class in Toronto that a Lecturer should be appointed by the Law Society: the Committee¹¹ to whom this request was referred could do no better than pass it on (in effect) to the Province: and the movement came to nothing.

The project of teaching students lay dormant for some years: in Hilary Term, 12 Vic., February 17, 1849, the "Osgoode Club," composed of Law Students in Toronto, again asked that a Lecturer should be appointed, but to no effect—and the project again slept.

In 1854 Trinity Term, 18 Vic., September 7, the Rule was laid down that examinations for call should thereafter be partly in writing and partly oral—questions were prepared by three Benchers (the Committee on Examinations) and were printed: Provision was made for a "Call with Honors" and curricula were set:

For Pass: Stephen's Commentaries, vol. 1, Bk. 2.
 Blackstone's Commentaries, vol. 1, caps.
 2 to 13.
 Smith on Contracts.
 Smith's Mercantile Law.
 Williams on Real Property.
 Goldsmith's Equity, parts 1 & 2.
 Stephen on Pleading.
 Taylor on Evidence.
 Archbold's Q.B. Practice or
 Smith's Chancery Practice.
 Besides the Public Statutes relating to
 Upper Canada and the Rules and
 Orders of the Courts.

For Call with Honors in addition—

Stephen's Commentaries, vol. 4.
 Byles on Bills.
 Archbold's Landlord & Tenant.
 Selwyn's Nisi Prius.
 Smith's Leading Cases.
 Coote on Mortgages.
 Dart on Vendors and Purchasers.
 White and Tudor's Leading Cases in
 Equity.
 Jarman on Wills.
 Story's Conflict of Laws.
 Story's Equity Jurisprudence and
 Pleading.

It was plainly stated that the Society hoped soon to appoint Lecturers, and that in that event attendance on Lectures would take the place of keeping Terms.

On February 16th, 1855, Hilary Term, 18 Vic., Lecturers were appointed: Dr. Connor in Easter Term on Mercantile Law, Mr. Wilson in Trinity Term on the Law of Landlord and Tenant, Mr. Mowat in Michaelmas Term on Equity Jurisprudence, and Mr. Van Koughnet in Hilary Term on Real Property.¹² The

Lectures were actually delivered; and failure to attend even one lecture lost the student his Term. These lectures continued with a change of Lecturers from time to time until after the termination of this fourth period: and I do not here further pursue the subject.

NOTES TO PART II.

¹Charles J. Peters was the only person before the Law Society's Act, admitted on the Roll of Attorneys without a licence—this was June 4th, 1796: Elmsley was appointed November 21st, 1796. Peters could not have been examined before the Chief Justice in this Province or Judges of the Court of Common Pleas: there was no Chief Justice and the Courts of Common Pleas had been abolished. He was possibly admitted in the Province of Lower Canada under the Ordinance of 1785 and consequently admitted in Upper Canada under section 4 of the Act of 1794, 34 Geo. III., c. 4 (U.C.).

²William Weekes, No. 16 on the Law Society's Roll, was admitted a member and a Barrister the same day.

³This was Walter Butler Wilkinson, who was articled to Jacob Farrand, one of the licensees under the Act of 1794 and one of the original founders of the Law Society in 1797.

⁴Nominally, indeed, it must "appear to the Benchers or a quorum of them that he is a fit and proper person to be admitted as a Student": but in fact the master's (or intended master's) certificate was all that was required. There is doubt whether the Student paid £5 per annum during his tutelage—the probabilities are rather in favour of that having being the case. The requirement that notice must have been given the previous term was not insisted upon till 1803—John Macdonell, afterwards Attorney General, who was killed at Queenston Heights in the War of 1812, was the first to be so admitted after a Term's notice.

⁵The guinea, Canadian currency, was 21s (\$4.20).

⁶The Benchers present when this Rule was passed were the Attorney General (John Beverley Robinson), Solicitor General Henry John Boulton, and Dr. William Warren Baldwin—probably the last named was the father of the Rule.

The "English Composition" of the Rule is no model to follow: the grammatical error seems to have escaped not only

Baldwin, a former teacher, but also the Chief Justice Powell and the puisnes William Campbell and D'Arcy Boulton, all men of education.

I transcribe here a note to the Address to The Chicago Society of Advocates. (See Note 1 to Part I, *ante* p. 24.)

"It is at least interesting to note that in examination of a candidate to practise medicine for long after this time, the practice seems to have been to examine in Latin first—a sort of matriculation examination—and to proceed with the professional subjects only if the candidate exhibited some familiarity with that language. We find the Upper Canada Medical Board writing the sister Boards in Montreal and Quebec in April, 1847:—

"The course this Board pursued in the examination of candidates is as follows: 1st. Some acquaintance with the Latin language is required. With this view, if the candidate cannot construe some paragraphs of Gregory's *Conspectus*, a portion of the *Pharmacopœia Londinensis* or a Latin written prescription is substituted; in the event of a total failure in these, the professional examination is not proceeded in. If the Latin examination is satisfactory, then follows an examination on professional subjects * * * *

"It may seem anomalous to begin a professional examination with an enquiry into the knowledge of Latin possessed by the candidate; but it must be borne in mind that in those days everyone of education had some knowledge of Latin—and an ignorance of that language indicated, if it did not absolutely prove, a lack of general culture." ("Examination for Licence to practise Medicine, Sixty Years Ago," *Canada Lancet*, June, 1913, by the present writer.)

The last to be entered on the Law Society's Books without examination was John Muirhead, and the first to be entered after examination was Marcus F. Whitehead, Nos. 82 and 86 on the Common Roll (not the Barristers' Roll).

For example, John Law, a school master in the District of Gore, applied to be admitted Student, June 20th, 1825: his sponsor, Mr. Thomas Taylor (the Reporter) said that Law hoped to be able to continue teaching while a Student-at-Law: Convocation refused to admit him before he should resign "his present situation of Master." Two years afterwards, he resigned and was admitted, and in 1834 proceeded to the Bar and was admitted Attorney.

^sThose present when the Resolution was passed were the Treasurer (Dr. Baldwin), Thomas Taylor (the Reporter), and James Buchanan Macaulay (afterwards Chief Justice and

knighted): those at the subsequent meeting in 1827 were the same Treasurer, the Solicitor General (Henry John Boulton) and James Buchanan Macaulay.

⁹There had never been a case in which anyone had been called to the Bar when under articles—I have gone over all the names with dates of Admission and Call respectively, and I find no case of the kind. There was perhaps some good reason for this Rule, but it is not apparent.

¹⁰The first Professor of Law was William Hume Blake, B.A. (T.C.D.), afterwards the Chancellor of Upper Canada, the father of the Hons. Edward and S. H. Blake. During his illness, his place was filled by Mr. (afterwards Chief Justice) Draper, and Mr. (afterwards Vice Chancellor) Esten. On Blake resigning in 1848, he was succeeded by Skeffington Connor, LL.D. (T.C.D.), who was afterwards (in 1863) a Justice of the Queen's Bench.

¹¹The Attorney General (afterwards Vice Chancellor) Robert Sympson Jameson, Dr. John Rolph and Robert Baldwin.

¹²Dr. Skeffington Connor, afterwards Justice of the Queen's Bench: Mr. (afterwards Sir) Adam Wilson, who became successively Chief Justice of the Common Pleas and the Queen's Bench: Mr. (afterwards Sir) Oliver Mowat who became Vice Chancellor, Prime Minister of Ontario and Minister of Justice for Canada, finally Lieutenant-Governor of Ontario: Mr. P. M. M. S. VanKoughnet, afterwards Chancellor of Upper Canada.

SUPPLEMENTARY NOTE TO PART II.

The Statute of 1857 required Articles of Clerkship to be filed in the office of the Clerk of the Crown and Pleas within three months of their execution; this prevented post-dating and fraud. Every Articled Clerk was required to attend the sittings of the Courts at Osgoode Hall during at least two terms under rules to be laid down by the Law Society.*

In August, 1859 (Trinity Term, 23 Vic.), the rules were recast. Students-at-Law on their admission were classed: 1—University Class; 2—Senior Class, and 3—Junior Class. The first class were graduates of a British University and were examined on one or more of the following books: Homer's Iliad (Book 1); Lucian, Charon, Life or Dream of Lucian and Timon; Horace, Odes; Mathematics, Euclid (Bb. 1, 2, 3, 4, and 6), or Legendre's Geometric (Bb. 1, 2, 3 and 4), Hind's Algebra; Metaphysics, Walker's or Whately's Logic, and Locke on the Human Understanding; Herschell's Astronomy; Ancient and

*This legislation, much needed and very valuable, was due in great measure to Hon. Robert Baldwin (Treasurer, 1847 and 1850-1858).

Modern History. For the Senior Class the books and subjects named for the University Class. For the Junior Class, Horace, Odes (Bb. 1 and 3), Mathematics, Euclid (Bb. 1, 2 and 3), or Legendre's Geometrie by Davies (Bb. 1 and 3), with problems.

An applicant who, having his degree, passed the examination for the University Class could be called in three years instead of five. If he failed, unless rejected in toto, he dropped into the Junior Class as was the case with an applicant for the senior class. There was no other than sentimental advantage in passing for the senior rather than the junior class; the time was not shortened for the member of the senior class.*

Education was now provided for all those proposing to become Barristers. Every Student-at-Law was obliged to attend for four terms all the lectures given by the lecturers of the Society, two in number, in Law and Equity respectively†, who were also examiners for call.

On the examination for call, there were two classes, "Call" simply, and "Call with Honors." The former was examined on Blackstone's Commentaries, Bk. 1, Addison on Contracts, Smith's Mercantile Law, Williams on Real Property, Story's Equity Jurisprudence, Stephen on Pleading, Taylor on Evidence, Byles on Bills, Public Statutes relating to Upper Canada, Pleadings and other books and subjects as the Benchers or Examiners might prescribe.‡

By this time the use of Osgoode Hall as a boarding-house had come to an end, but still Articled Clerks were obliged by

*Applicants were examined in the presence of a standing committee of the Benchers, but by the "Examiner for Matriculation." Mr. Hugh N. Gwynne, B. A. (T. C. D.) was appointed to this office; he had been from 1842, Secretary and Librarian.

†There had since 1855 been temporary lecturers appointed, but in March, 1858, S. H. Strong (afterwards Sir Henry Strong, Chief Justice of Canada) was permanently appointed Lecturer in Equity, and J. T. Anderson, Esq., in Law. See 4 Canada Law Journal, O. S., 60. Strong was one of the ablest equity lawyers Canada ever produced. On the permanent establishment of the Osgoode Hall Law School, it was hoped for some time that he would become its first principal, but he finally declined the offer.

‡The examinations for admission were conducted orally by the "Examiner for Call" in the presence of a Committee of the Benchers. Those for Call and Certificate were first in writing under the supervision of the "Examiner for Call" and if 50 per cent. were taken by the Candidate he then went up for an oral examination by the Benchers in Convocation; if 50 per cent. were not taken, the Candidate failed.

The examinations were fairly stiff; examples may be seen in (1860) 6 Can. L. J., O. S., 31, 78. Often a large percentage of those examined were refused certificates; at one examination as many as 14 out of 22 candidates, nearly 65 per cent., failed.

Statute to keep two terms. They did not take the lectures as Articled Clerks, but as Students-at-Law if they were such, just as Students-at-Law as such were no longer required to keep terms as such, but if Articled Clerks they must keep two terms as Articled Clerks. The Student-at-Law passed a preliminary examination, the Articled Clerk did not.

In the first Parliament of the Province of Ontario, by Statute (1868), 31 Vic. 23, it was provided that an Attorney or Solicitor must during the year next but two before his final examination pass an examination to the satisfaction of the Law Society and another to its satisfaction not less than one year thereafter.

I do not stop to detail what was done under this Act as it merges into that next to be mentioned.

The state of affairs was improved somewhat by that Statute, but not sufficiently. In 1872 the Law Society's petition to the Legislature to enable them to extend the advantages of legal education was acceded to, and a new Act passed, 35 Vic., c. 6. This enabled the Society to require that all Clerks thereafter to be articled should pass a preliminary examination, and that their term of service under their articles should not run until they had passed this examination. The Benchers also were empowered to make rules for the improvement of legal education, appoint readers and lecturers, require the attendance of Articled Clerks and Students-at-Law at reading and lectures and an examination thereon as a prerequisite to call to the bar or admission as an attorney, etc.*

The Benchers accordingly, June 7, 1872, laid down a curriculum for the preliminary examination of the Articled Clerks; Caesar's Commentaries (Bb. 5 and 6); Arithmetic; Euclid (Bb. 1, 2 and 3); Outlines of Modern Geography; History of England (W. Douglas-Hamilton); English Grammar and Composition; Elements of Bookkeeping. The Students-at-Law passed an examination on Horace, Odes (Bk. 3); Virgil's Aeneid (Bk. 6); Caesar's Commentaries (Bb. 5 and 6), Cicero, Pro Milone; Mathematics, Arithmetic, Euclid (Bb. 1, 2 and 3), Algebra to end

*This Act was promoted by the Hon. (afterwards Sir) Oliver Mowat, the Prime Minister, who had been a Vice-Chancellor and took a great interest in the profession; but the matter had received long and careful consideration by the Benchers, culminating in a Report by the Committee on Legal Education, December 8, 1871 (Michaelmas Term, 35 Vic.). The Chairman of this Committee was Thomas Moss, afterwards Chief Justice of Ontario; and the Report recommended an application to Parliament. The Act of 1868 was generally known as Blake's Act from its author, Hon. Edward Blake, Prime Minister of Ontario, Member of the House of Commons of Canada and afterwards Member of the Imperial House of Commons. He was long a Bencher and for some years Treasurer of the Law Society.

of Quadratic Equations; English History (W. Douglas-Hamilton); Outlines of Modern Geography, English Grammar and Composition. It will be seen that the curricula have much in common, Caesar, Arithmetic, Euclid, Geography, History of England, English Grammar and Composition. The Student-at-Law took also Horace, Virgil, Cicero, Algebra; the Articled Clerk, Bookkeeping.* There was, however, a rule that no one admitted as a student-at-law need pass a preliminary examination as an Articled Clerk. Graduates in Arts of a British University were not subjected to any examination, and there was no longer to be any division into Senior and Junior Classes.

A Law School† was established with four lecturers: 1—General Jurisprudence, 2—Real Property, 3—Commercial and Criminal Law, and 4—Equity; but attendance on the lectures was made voluntary. There was no separate building for the Law School; the lectures were given at Osgoode Hall and were fairly well attended.

Every Student-at-Law before his final examination for Call was required to pass two intermediate examinations, the first in his third year, the second in his fourth. These corresponded to the two examinations prescribed for Articled Clerks by the Statute of 1868. The curriculum prescribed for each was the same, namely, for the first Intermediate, Williams' Real Pro-

*These examinations were conducted by the "Examiner for Matriculation," Mr. Gwynne, before a Committee of Benchers appointed for that purpose and were partly *ore tenus*. Papers were prepared and printed in (1) Latin, (2) Mathematics, (3) History, Geography, English Grammar and Composition. If the candidate did not pass a satisfactory written examination he could not offer himself for the oral. All distinction of Senior and Junior Class was abolished.

†The Staff was composed of Alexander Leith, President and Lecturer in Real Property; James Bethune, Lecturer in General Jurisprudence; Zebulon A. Lash, Lecturer in Commercial and Common Law, and Charles Moss, Lecturer in Equity. Mr. Leith was the well-known Real Estate Lawyer, editor of Blackstone, vol. 2. Mr. Bethune became one of the most prominent men at the Bar, a member of the Legislature, whose too early death was much lamented. Mr. Lash (now K. C.) was afterwards Deputy Minister of Justice of the Dominion, but returned to active practice and still adorns the Bar. Mr. Moss was afterwards Sir Charles Moss, Chief Justice of Ontario.

In December, 1874, Mr. Bethune resigned and was succeeded by William Mnlock (now Sir William Mnlock, Chief Justice of the Exchequer Division).

In May, 1876 (Trinity Term), the term of engagement for Lecturers was made one, two, three and four years respectively, and they were made ineligible for re-appointment. Mr. Moss was elected for one year and made President, lecturing on Common and Commercial Law; Mr. Mnlock for two, lecturing on Equity; Mr. John S. Ewart (now K. C.) for three years, lecturing on Real Property, and T. D. Delamere (afterwards K. C., now deceased), for four years, lecturing on Criminal Law and Law of Torts. After the abolition of the Law School, Mr. Ewart for some time gave a weekly lecture on Chancery practice and Mr. Delamere on Common Law practice.

perty, Smith's Manual of Equity, Smith's Manual of Common Law, Act respecting the Court of Chancery, Consolidated Statutes of Upper Canada, chapters 12, 42 and 44. For the second Intermediate, Leith's Blackstone*; Greenwood on Conveyancing (chapters on Agreements, Sales, Purchases, Leases, Mortgages, Wills), Snell's Treatise on Equity, Broom's Common Law, Consolidated Statutes of Upper Canada, c. 8, Statute of Canada, 29 Vic., c. 28†; Insolvent Act. Four scholarships of considerable value were established, one for students under one year's standing, one for those under two, one for those under three, and one for those under four. The curricula were:—for the first, Stephen's Blackstone, vol. 1; Stephen on Pleading, Williams on Personal Property, Griffith's Institutes of Equity, Consol. Stat. U.C. cc. 12, 43; for the second, Williams on Real Property, Best on Evidence, Smith on Contracts, Snell's Treatise on Equity, the Registry Act‡; for the third, Real Property, Statutes relating to Ontario, Stephen's Blackstone, Book V, Byles on Bills, Broom's Legal Maxims, Story's Equity Jurisprudence, Fisher on Mortgages, vols. 1 and 2, chapters 10, 11 and 12; for the fourth, Smith's Real and Personal Property, Russell on Crimes, Common Law Pleading and Practice, Benjamin on Sales, Dart on Vendors and Purchasers, Lewis's Equity Pleading, Equity Pleading and Practice of this Province.

The Articled Clerk had a final Examination on Leith's Blackstone*, Watkins on Conveyancing, Ninth Edition, Smith's Mercantile Law, Story's Equity Jurisprudence, Leake on Contracts, The Statute Law, The Pleading and Practice of the Courts. The Student-at-Law if he did not go in for Honours, Blackstone, Volume 1, Leake on Contracts, Watkins on Conveyancing, Story's Equity Jurisprudence, Stephen on Pleading, Lewis's Equity Pleading, Dart on Vendor and Purchaser, Taylor on Evidence, Byles on Bills, The Statute Law, The Pleading and Practice of the Courts; and if he desired Honours, also Russell on Crimes, Broom's Legal Maxims, Lindley on Partnership, Fisher on Mortgages, Benjamin on Sales, Jarman on Wills,

*This was an edition of that part of Blackstone's Commentaries which relates to Real Property. The Editor, Mr. Alexander Leith, Q.C., was a very distinguished Real Property lawyer in Toronto, and in this work he gave the law as modified by our legislation so as to adapt Blackstone to the circumstances of this Province; otherwise, of course, Blackstone would be very misleading. It has always been the policy of the Law Society to prescribe Ontario books where possible.

‡That is, the Statutory law of Property and Trusts in Upper Canada. Before the British America Act of 1867, the two Canadas had been for about a quarter of a century united in one Province of Canada.

†This is, the Statutory provision as to Registration of Titles to Real Estate.

Von Savigny's Private International Law (Guthrie's Edition), Maine's Ancient Law. All final candidates might be and not infrequently were examined also on the Intermediate subjects.

The Law School thus established began its career in October, 1873, and very many students availed themselves of the opportunities thus given for a legal education. Students who would otherwise have served their term in the country were attracted to Toronto. It became a matter of complaint of the country practitioners that they were deprived of their clerks—particularly so as the term of service was reduced by attendance on lectures and passing the law school examinations. A student could reduce his term by from six to eighteen months by this means. One requires no imagination to conceive the very great inducement this was to a capable and ambitious student.

Finally by a vote of 8 to 4, Convocation determined, November 24, 1877, Michaelmas Term, to abolish the Law School from and after the last day of the succeeding Easter Term, June, 1878.

This step was the subject of much discussion in the profession and in the press, legal and lay. All kinds of opinions were expressed as to the means, but most agreed as to the propriety of some form of education being provided for. It had been proposed that the Law School should be affiliated with the University of Toronto, but that course had not recommended itself to Convocation; a Law College was suggested by some. In May, 1881, the formation of associations like the Osgoode Legal and Literary Society throughout the Province was recommended, with a sufficient number of students to ensure a good attendance and of Barristers disposed to deliver lectures. It was recognized that the Law Society would not create or direct these societies, but could only recommend. Some such were formed, but they did not last long nor were they very useful while they did last.

Petitions came in from students in large numbers; and in Michaelmas Term of 1881, the Society re-established the Law School for a period of two years to begin December 12, 1881, with four lecturers the senior of whom was to be chairman, attendance still to be voluntary*. In view of the many peti-

*The Lecturers appointed were Thomas Hodgins, Q. C. (afterwards Master-in-Ordinary of the Supreme Court of Judicature for Ontario), Chairman and Lecturer on Constitutional Law, etc.; Thomas D. Delamere, already mentioned, who lectured on Pleading and Practice; Joseph E. McDougall (afterwards Q. C. and Judge of the County Court of the County of York) and E. Douglas Armour (afterwards K. C.), author of several valuable works on Real Property.

tions for the re-establishment of the school, the attendance was very disappointing, but it was decided to try the experiment till the end of the two-year term.

In June, 1883, the school was continued till the early Easter Term, 1884.* A proposition to establish law schools outside of Toronto failed. In Easter Term, 1884, the school was continued until the last day of Easter Term, 1886. In 1887 the project of establishing a teaching faculty in the University of Toronto was taken up by a committee of the Benchers with the Senate of the University, and an elaborate scheme was drawn up. This was vigorously criticised not only in Convocation, but out of it, especially by those interested in other Universities.† The committee was reappointed with additional members and directed to take the question up with all the Universities in the Province; they did so, but in the long run without success‡.

January 4, 1889, it was decided "to continue and reorganize the school and to appoint a President§, who should have supervision and general direction of the school," not less than two lecturers and two examiners—the lecturers heretofore having been also examiners. Attendance was made compulsory for the first time. All Students-at-Law and Articled Clerks were required to take the second and third years of the school course. If they resided in Toronto during the last three years they must attend the full three years' course. A small fee

*The Lecturers were Messrs. Delamere and Armour already named. W. A. Reeve (afterwards Principal and a Q. C.) and Alfred H. Marsh (afterwards Q. C.)

†The scheme will be found printed at length in 24 Can. L. J., N. S., pp. 180 sqq. See one criticism at pp. 151-153 of the same volume; another pp. 182-173.

‡The report is printed in 24 Can. L. J., N. S., at pp. 393-397; another will be found in 25 Can. L. J., N. S., 51.

§It had been hoped to secure Mr. Justice Strong of the Supreme Court of Canada for this position, but he declined, and, July 3, 1889, W. A. Reeve, Q. C., was appointed Principal.

The new Principal was instructed to visit the Law Schools in New York, Massachusetts and such other places as might be thought advisable, with Messrs. E. Martin, Q. C., and Charles Moss, Q. C., to acquire information on the Law School systems in vogue. He did so, and reported, September 3, 1889, to Convocation; and the School was formally opened, October 7, 1889. The Lecturers were Messrs. Marsh and Armour; the Examiners were Mr. P. H. Drayton (afterwards Official Arbitrator) and Mr. R. E. Kingsford (afterwards Police Magistrate, Toronto).

When in Easter Term, 1890, the number of lecturers was increased to four, Messrs. Drayton and Kingsford were appointed Lecturers, and Messrs. F. J. Joseph, Ayton-Finlay and Malcolm Cameron, Examiners.

was imposed, by no means enough to pay for the support of the school.

Lectures had been given in Osgoode Hall, but for a long time the proposition had been under consideration to erect a building specially for a Law School. Tenders had been obtained as early as December, 1880, but the matter dragged. It was taken up in earnest in the fall of 1889, plans were obtained and building proceeded with in 1891 and the School was ready in 1892.

The society in 1889 dropped their preliminary examination, the last to be Hilary Term, 1890. Thereafter the examination of the University was accepted instead, and now a degree of Arts or Law of a British University or Graduation Diploma of the Royal Military College, the examination of a university on prescribed subjects, or a matriculation certificate, or a certificate of the further examination at the R. M. C. is sufficient; and one of them is required.

I shall not trace the trifling changes which have been made in the curriculum of the Law School; but here set out the present*.

SUBJECTS OF STUDY.

FIRST YEAR.

GENERAL JURISPRUDENCE.

Holland's Elements of Jurisprudence.

CONTRACTS.

Anson on Contracts.

REAL PROPERTY.

Williams on Real Property, except Parts III and VII.

The Land Titles Act.

COMMON LAW.

Odger's Common Law.

CONSTITUTIONAL HISTORY AND LAW.

Bourinot's Manual of the Constitutional History of Canada.

Lefroy's Leading Cases in Canadian Constitutional Law.

*The present Staff is as follows:

FACULTY.

Principal:—Newman Wright Hoyles, B. A., LL. D., K. C.

Lecturers:—John King, M. A., K. C. (Emeritus), John Delatre Falconbridge, M. A., LL. B., John Shirley Denison, K. C., Samuel Hugh Bradford, B. A., K. C., Edward George Long, Esq.

Demonstrators:—Christopher Charles Robinson, B. A., Harold William Alexander Foster, LL. B.

Examiners:—Patrick Kerwin, George Franklin McFarland, LL.B., Senior Examiner, John Alexander Soule, LL. B., John MacDonald Telford, Richmond Wylie Hart, B.A.

EQUITY.

Maitland's Lectures in Equity.

PRACTICE AND PROCEDURE.

Judicature Act and Rules of Practice.

STATUTE LAW.

Such Acts and parts of Acts as shall be prescribed by the Principal.

BOOK-KEEPING.

Elements of.

SECOND YEAR.

CRIMINAL LAW.

The Criminal Statutes of Canada.

REAL PROPERTY.

Kerr's Student's Blackstone, Book 2, Armour's Real Property.

PERSONAL PROPERTY.

Williams on Personal Property.

CONTRACTS.

Pollock on Contracts.

Rawlins on Specific Performance.

Pollock on Partnership.

TORTS.

Underhill on Torts.

EQUITY.

H. A. Smith's Principles of Equity.

Underhill on Trusts.

EVIDENCE.

Powell on Evidence.

CONSTITUTIONAL LAW.

Lefroy's Canada's Federal System.

PRACTICE AND PROCEDURE.

Statutes, Rules and Orders relating to the jurisdiction, pleadings, practice and procedure of the Supreme Court of Canada, the Exchequer Court and the Courts of Ontario.

STATUTE LAW.

Such Acts and parts of Acts as shall be prescribed by the Principal.

THIRD YEAR.

REAL PROPERTY.

Clerke & Humphrey on Sales of Land.

Hawkins on Wills.

Armour on Titles.

CRIMINAL LAW.

The Criminal Statutes of Canada.

EQUITY.

Bell & Dunn on Mortgages.

De Colyar on Guarantees.

TORTS.

Pollock on Torts.

Smith on Negligence, 2nd edition.

EVIDENCE.

Best on Evidence.

COMMERCIAL LAW.

Chalmers on Sales.

Maclaren on Bills, Notes and Cheques.

PRIVATE INTERNATIONAL LAW.

Foote's Private International Jurisprudence.

CONSTRUCTION AND OPERATION OF STATUTES.

Hardcastle's Construction and Effect of Statutory Law.

PRACTICE AND PROCEDURE.

Statutes, Rules and Orders relating to the jurisdiction, pleading, practice and procedure of the Supreme Court of Canada, the Exchequer Court and the Courts of Ontario.

COMPANY LAW.

The Ontario Companies Act and amendments.

The Companies Act, R.S.C., Chap. 79, and amendments.

The Winding-up Act, R.S.C., Chap. 144, and amendments.

Palmer's Company Law.

MUNICIPAL LAW.

The Municipal Act.

STATUTE LAW.

Such Acts and parts of Acts as shall be prescribed by the Principal.

NOTE.—In the examinations of all the years the questions put are liable to be based upon:—

- (a) The text-books and statutes above mentioned.
- (b) The lectures delivered by the Principal, Lecturers and Demonstrators.
- (c) The Special Lectures delivered by members of the profession and others.

NOTE.—In the examination of all the years, students are subject to be examined upon the *matter of the lectures* of those years respectively, as well as upon the text books and other work prescribed.

Any person who desires to qualify for the practice of the law as a Barrister and Solicitor in Ontario, and who does not come under the rules in special cases, is required:

- 1—To be admitted into the Society as a Student-at-Law.
- 2—To serve a practising Solicitor as his clerk for the prescribed period.
- 3—To attend lectures at the Law School for three years.
- 4—To pass the prescribed examinations.
- 5—To pay the prescribed fees.

(If he does not wish to be admitted as a Solicitor he need not serve under Articles at all, but must attend a Barrister's Chambers for the same time. This is in practice never done now.)

The time of service for a graduate is three years; for a non-graduate five; fee for admission to the Society is \$51, school fees per term \$100, for call to the bar \$100, and for admission as Solicitor \$60. The title "Attorney" has not been in use since 1881, all members of that branch of the profession are now called Solicitors.

PART III.

OSGOODE HALL.

OSGOODE HALL

CHAPTER X.

OSGOODE HALL, PRELIMINARY STEPS AND ACQUISITION OF LOT.

The first place of meeting of the Law Society was Wilson's Hotel,¹ Newark; no more than one meeting seems to have been there held, July 17, 1797; the next meeting was at York (Toronto) July 13th, 1799: and all the subsequent meetings have been held at that place.

No particular place in the town is mentioned till the meeting of Hilary Term, 43 Geo. III., 1803, when the Society met in the Chambers of the Attorney General, Thomas Scott (afterwards in 1806 made Chief Justice), thereafter the Society met at the Chambers of the Attorney General till 1808 when, February 22, it met at the office of the Clerk of the Crown. In 1815 Easter Term, the Chambers of the Attorney General, D'Arcy Boulton (afterwards Justice of the Court of King's Bench), supplied the place of meeting, and this continued till Michaelmas Term, 59 Geo. III., 1819, when the Society met several times at the Court House, but went to the Chambers of the Attorney General, John Beverley Robinson, the same term; then to the Chambers of the Treasurer, Henry John Boulton, who was also at the time Solicitor General. The Treasurer's office was the place of meeting so long as Boulton continued to be Treasurer, and the practice was kept up when in 1820 he was succeeded by Dr. Baldwin.

In Michaelmas Term of this year, a resolution was passed "That the Society do apply a sum of money not exceeding five hundred pounds, in the erection of a building for their use to be called "Osgoode Hall"² on

the area opposite the Church, lately purchased by them: And that the Attorney General (John Beverley Robinson), the Solicitor General (Henry John Boulton) and Mr. Baldwin (Dr. William Warren Baldwin) be a committee to procure plans and estimates for the erection of Osgoode Hall, to be submitted to the Society for its approval on Thursday the sixteenth instant."

Nothing seems to have been done on this resolution: no reports were made and no plans for building at that place are extant. July 1, 1825, Trinity Term, 6 Geo. IV., it was resolved "that Mr. Solicitor General (Henry John Boulton), Mr. Ridout (Mr. George Ridout, afterwards Treasurer and District Court Judge), Mr. Taylor (the Reporter), Mr. Macaulay (afterwards Chief Justice Sir James Buchanan Macaulay), Mr. Baldwin (Dr. W. W. Baldwin), Mr. Rolph (Dr. John Rolph) and Mr. Hagerman (Christopher Alexander Hagerman, afterwards Solicitor General, Attorney General and Justice of the King's Bench), Benchers, be a committee to enquire for a lot of ground suitable for the erection of a Hall for the permanent accommodation of the Society, and that any four of the said gentlemen may form a quorum of such committee, with leave to make application to Government for a portion of the ungranted land in the Town of York or its neighborhood, should any such portion be found, and His Excellency the Governor be pleased to forward this Public undertaking by a Grant and in the event of failure of such application to receive offers of sale from any individuals willing to dispose of private property suited to the object. And it is further resolved that the said Committee or quorum do procure plans, elevations and estimates of the necessary Buildings and that the result of their enquiries on all these matters be laid before the Society in Michaelmas Term next."

In Michaelmas Term, 6 Geo. IV., November 15th, 1825, "the Society recommended the carrying into effect the Resolution of last Trinity Term relative to enquiry for a suitable site for the erection of a Hall for the

accommodation of the Society and hope the Gentlemen Benchers absent on this occasion will concur in this necessary measure."

At the next meeting three days afterwards, the "Subject of a site for a Hall and the erection of suitable buildings having been taken into consideration * * * and the matter discussed: it was unanimously resolved that the Treasurer (Dr. Baldwin) do draw up a brief statement of the intention of the Society immediately to appropriate its funds towards the erection of a Hall and its disposition to accommodate the Court of King's Bench with all necessary apartments according with the importance and dignity of its functions: if the funds of the Society could be aided by a reasonable grant of money on the part of the Province, and that the Government and Judges should approve of such a measure of uniting funds in order to secure not only more immediate and ample accommodation, but also to erect a building worthy of the Province and its seat of Government. That such statement be presented to the Judges as soon as practicable and that the Treasurer may assure them of the willingness of the Society to pledge themselves to the extent of Two Thousand Pounds towards this desirable object."³ The Statement was drawn up and after approval by the Benchers was submitted to the Judges in Court.

It is plain that the Government considered the proposition favourably: April 23, 1827, Easter Term, 8 Geo. IV., the Treasurer, Dr. Baldwin, laid before the Society a diagram proposed by the Surveyor General of the Province, of a plot of ground whereon His Excellency has been pleased to recommend the grant of a site for the use of the Society: the Society examined the plan, selected the part they thought most suitable, and instructed the Treasurer to communicate the selection to the Executive Council.

In the following Michaelmas Term, Nov. 5, 1827, the Treasurer reported that he had as yet received no defi-

nite answer. After some discussion it was decided that it was not prudent to proceed with the application for the time being, and Attorney General Robinson was requested to enquire how far an application for a site on Russell Square ⁴ would be acceptable to the Government.

January 11th, 1828, Hilary Term, 8 Geo. IV., the Attorney General was instructed to press this application. No success attended the application, and in Easter Term, 9 Geo. IV., April 30, 1828, the offers of Mr. Mercer ⁵ and the Attorney General to sell lots to the Society were discussed. At the next meeting in the same Term, May 2nd, 1828, "It was unanimously resolved that the purchase of six acres from the Attorney General in front of his Park Lot be carried into effect without delay—the sum agreed for by the Society with him being one thousand pounds (\$4,000). Resolved also that the Attorney General (John Beverley Robinson), the Solicitor General (Henry John Boulton), Dr. Baldwin, Mr. Ridout and Mr. Macaulay, be a Committee of Management for approving a plan, making contracts and superintending the erection of a building."

CHAPTER XI.

OSGOODE HALL, ORIGINAL BUILDING.

On June 26, 1828, Trinity Term, 9 Geo. IV., two schemes were proposed in Convocation, one by Attorney General Robinson, for "a Hall and building sufficient for the present purposes of the Society, not to exceed £3000 (\$12,000) in expense and to form the Central Edifice of future buildings to be extended laterally as the increase of the Society may hereafter require," the other advocated by Solicitor General Boulton, "a smaller building, which might cost about £700 (\$2,800) to be built near to the Street for the present purposes of the Society and at a future answering some subordinate use of the Society"—the former scheme carried and plans were asked for.

On May 2nd, 1829, Easter Term, 10 Geo. IV., the Benchers resident in York were elected a Committee to superintend the erection of the building—the matter was considered at many meetings, the Architect John Ewart being in attendance; and at length in Trinity Term, June 24, 1829, the architect was ordered to build, he to procure the material, workmen, &c., and to be paid a commission of $7\frac{1}{2}\%$. At the same meeting the Treasurer for the time being, Dr. Baldwin, and D'Arcy Boulton, Jr., were appointed a committee to superintend the building.

The project lagged: Attorney General Robinson became Chief Justice, being followed as Attorney General by Henry John Boulton: April 20th, 1830, Easter Term, 11 Geo. IV., "the propriety of disposing of the Law Society property purchased from the Chief Justice was taken into consideration—and it was unanimously resolved that the selection made for the Law Society Hall is most eligible and therefore the Treasurer (George Ridout) notify the contractor to complete the building according to the original plan." This was done and by April of next year some £1,289 (\$5,156) had been spent; and by November the building was so far advanced as to be insured for £2,000 (\$8,000).

The property was not in the Town of York, that town going no further north than Lot Street (now Queen Street)—York was "Muddy Little York," and even in November, 1831, the Society had to build a pavement across King Street and Lot Street, for the use of Barristers and others going to and from Osgoode Hall.

The Court could not sit out of York without an Act of Parliament: and the site was thought too remote and "out of Town."

In Michaelmas Term, 1 Wm. IV., November 1, 1830, the propriety of disposing of Osgoode Hall and selecting some more convenient site for the erection of buildings again came up and was considered November 8th: it seemed to some proper to give more time for consideration, but a motion to that effect was voted down. Messrs.

Hagerman, Small, Washburn and Bidwell⁶ thereupon withdrew, and upon motion of Robert Baldwin it was declared that the property and Hall should be the permanent home of the Society. A Rule was drawn up accordingly and approved by the Judges, thereby putting an end to the controversy. Up to November, 1828, the meetings had been mainly held in the Treasurer's Chambers, after that time till November, 1829, in the Court House and then in the Law Society's Library⁷ in the Court House.

By Trinity Term, 1 & 2 Wm. IV., February 23, 1831, the building was well under way; and on that day the Building Committee were authorized to remove the Library, Cases, Cabinets and property of the Society to Osgoode Hall as soon as it was sufficiently finished—and to procure the pavement of a foot path from King Street to the Hall on the west side of York Street and in front of the building. At the same meeting a Committee composed of the Treasurer (George Ridout), Dr. Baldwin and Mr. D'Arcy Boulton was appointed "to enquire into the arrangements necessary for the regulation of the new building (Osgoode Hall) with a view to the accommodation of the members of the Society, students as well as others."⁸

The building was completed in time for Convocation to sit there for the first time in 1832, February 6th, Hilary Term, 2 Wm. IV.: the next day the work was accepted, the architect John Ewart praised, and the Rule again passed making Osgoode Hall the permanent seat of the Society.

From a Report received 18th February, 1832, it appears that the Chief Justice had during the previous session been disappointed in the Legislature which he had expected to provide a fund to pay for suitable rooms for the Court: that he had then approached the Governor, but found that he had no money for that purpose—he therefore suggested that the Law Society should offer suitable accommodation for the Court and Judges,

relying upon the Legislature defraying the expense of furnishing the rooms and allowing a reasonable sum for rent to the Society—the Society acceded to that suggestion. The Court accordingly left the Court House where it formerly sat and took possession of the rooms provided at Osgoode Hall on February 6th, 1832.

Even yet there was trouble about the Court, for we find that, November 16, 1832, Michaelmas Term, 3 Wm. IV., a Committee was appointed to make enquiry whether it is the final intention of the Government to remove the Court of King's Bench from Osgoode Hall and to suggest negotiations. His Excellency replied that "the present building," now nearly finished by means of a fund appropriated for that object, would afford all the necessary accommodation for the Court and that there could be now no occasion for entering on the consideration of such a proposal."

The original building over the construction of which Dr. Baldwin kept a vigilant eye, was part of the present East Wing; it contained Chambers—rooms—for Students and Barristers who could get their board also in the Hall. It was occupied by students in 1832, for we find in November of that year a row between students there boarding receiving the attention of Convocation, November 8, 1832. Mr. James Martin Cawdell, the Secretary of the Society, was, February 17, 1832, refused permission to room in the building, as he was not a member of the Society, and a resolution of Hilary Term, 2 Wm. IV., was explicit that "no person except the officers of the Society can be permitted to reside in Osgoode Hall unless they be members of the Society."

A Committee of Oeconomy was provided for by Order of Hilary Term, 4 Wm. IV., February, 1833, composed of three members, of whom the Treasurer was to be one—the same Order fixed the time for meals, i.e., Breakfast, 8 a.m.; Dinner, 5 p.m., and Tea, 8 p.m.—the meals to remain on the table one hour. For Board and Room £37 10s. (\$150.00) per annum, payable quart-

erly: for Barristers boarding during Term time, 4s. 8d. (93 cents) per day or 25s. (\$5.00) per week. "Members of the Society not living at Osgoode Hall may breakfast, dine, drink tea or take luncheon at the tables at the hours prescribed, at the following rates: Breakfast 1s. 2d. (23 cents); Luncheon 1s. (20 cents); Dinner 1s. 6d. (30 cents); Tea 1s. (20 cents) and any and every member being a Barrister may call for a bottle of wine at a charge of 5s. (\$1.00) or a pint at 2s. 6d. (50 cents)." Cards were not to be played in the Hall: the Society provided a bedstead, table, two chairs, one wash hand stand, one water pitcher, one basin, one water pot, one candlestick and snuffers, but the quarterly boarder his own bed, bedding, towels and washing—no bed curtains to be allowed but woollen ones.

CHAPTER XII.

OSGOODE HALL—FIRST ENLARGEMENT.

In Hilary Term, 3 Wm. IV., February, 1833, the Treasurer reported tenders for enlarging the Building: "building the intermediate range of Chambers between the present Wing and the proposed Centre of the whole * * * to afford twenty-four comfortable bed chambers with stair-case and passages and eight commodious offices." This was directed to be proceeded with—it formed that part of the Hall below the present Library. The contract was entered into with John Ritchie to build this "range of Chambers" in April, 1833.

The Chambers were run at a loss—from Hilary Term, 1833, to Hilary Term, 1834, the Society lost £52 12s. 9d. (including indeed a wine bill of £7 12s. 3d., which Mr. Ware had not paid—i.e., \$30.45, also about £45 (\$180) left unpaid by the students). Students never have been a profitable source of revenue to the Society—at least not for eighty years.

The next year again there was a loss of £53 4s. 11d.; but this year there were only seven boarders for the first half-year and ten for the second. Next year notwithstanding the 24 bedrooms and 8 offices, there was once more a loss, this time of £116 7s. 1d., due to some extent to the amount paid out by the Society for Beer—John Doel, the Brewer, receiving £27, against the sum of £8 3s. 3½d. paid to Freeland for Candles¹⁰—the Boarding at Osgoode Hall never was made to pay.

In Trinity Term, 1 & 2 Vic., June 19, 1838, Mr. Spragge (afterwards Chancellor and C.J.O.) gave notice that he would move a committee to take into consideration the sale of the Hall and Lot, but this came to nothing. A few days before, June 16th, 1838, the Treasurer reported that the Government was desirous of leasing Osgoode Hall and appurtenances for the troops, and a Committee was appointed to deal with the matter. The arrangement was carried out, and, June 23, the Treasurer reported that he had obtained a room in the East Wing of the Parliament Buildings for the Society's meetings—there the meetings were held for seven years, that is till November 15, 1845, Osgoode Hall, in the meantime, being used as a barracks or being cleaned and repaired after the soldiers.

CHAPTER XIII.

OSGOODE HALL AFTER THE REBELLION OF 1837-38.

In February, 1843, the Government gave notice of giving up possession, and after a long wrangle over repairs, in which it must be said the Society was very shabbily treated by the Government, the Hall was repaired and cleaned.

During this year, June 24, 1843, the Bishop of Toronto asked the Law Society to give him a site "for

the purpose of erecting thereon an elegant church 64 x 80''; but the Society thought they had "no authority to grant any lands of the Society for the purposes prayed * *." The reason given by the Bishop was that there were over 7,000 souls, members of the Church of England in Toronto, and only one place of worship; he thought the west corner of their lot would be most convenient, and it had "been suggested that the Honble. the Law Society would readily give a site for said Church * *." He did not say why the 7,000 should not buy a site for themselves.

A little later, August 9th, 1843, the Building Committee of St. George's Church offered to lease part of the western side of the Osgoode Hall grounds: the offer was accepted and a Committee appointed to enquire into a project of laying off Building Lots, &c., &c. This came to nothing—why, does not appear; the Society was willing to lease to the Church a lot 100 x 110 for 21 years, renewable, at £20 (\$80) rental per annum. The project of cutting up the grounds into building lots came up more than once: e.g. in 1834, May 3, a committee was appointed to deal with the matter but nothing came of it; nor of a similar movement April 30, 1835: the proposition in 1846 to dispose to the Home District Council for the site of a Court House and Gaol, part of the lot on a lease for 999 years, also fell through.

Some trouble was experienced with King's College, which as early as 1833 began building at the foot of the Avenue, the Lodge torn down but the other day: the Law Society served notice that this building interfered with their right-of-way over Park Lane (now University Street) and retained Mr. R. B. Sullivan. The College disclaimed any intention to interfere with the Society's rights, but the Society was inexorable. In 1837 the matter was again agitated and new negotiations were had: the dispute was in 1850 finally settled by the College giving a deed of acknowledgment,

but not before John Hillyard Cameron had been retained by the Society.

The Law Society having regained possession of their premises in 1843, the question of more space was pressing. So far there were only the East Wing and a low range of offices, &c., west thereof, below our present Library—the former building is accurately described as “a plain matter-of-fact building two storeys and a half in height.”¹¹

After a long dispute with the Commissariat Department, the sum of £500 was, 10th February, 1844, accepted for the damage done to the buildings by the troops—the damage could not be repaired for £700, but there was no way of enforcing the claim. The same day a Committee was appointed to look into the matter of further accommodation, repairs and improvements. The Committee reported June 1st, 1844: June 18 it was decided to enclose the premises by “a fence similar to the fence round the premises of J. S. Macaulay¹² on Yonge St.: and that the fence on the western side be in a line produced from a line of Street on College Avenue laid out by the Chief Justice * *.” The Society, however, thought that “in the present state of the funds of the Society it is inexpedient at this time to erect a permanent fence on the front of the property,” but that they should appropriate £100 annually “for a fund to build a handsome stone wall and iron railing.” A Committee was also named to superintend the planting and improvement of the grounds.

CHAPTER XIV.

OSGOODE HALL—SECOND AND THIRD
ENLARGEMENTS.

I.

On August 6th and 10th, 1844, the plans for the proposed addition were examined in Convocation and that of Mr. Lane approved—tenders were called for and subsequently approved. The work went on rapidly; we find by a report of the architect, Harry B. Lane, considered in Michaelmas Term, 9 Vic., November 8, 1845, that the whole of the west wing was in state of rapid completion, all the stone or outside work being finished and the painting, &c., of the inside going on. He thought the whole would be ready for use in the course of a month, the fittings for the Courts of King's Bench and Chancery which were to be accommodated there, being nearly ready.

The Library, in the centre part of the building, had been plastered, and the joiners were at work in the interior. The architect calls attention "to the lower part of the centre part under the Library, consisting of a basement and another storey, which remains in the same state as when occupied as barracks." ¹³ He suggests putting this part of the building in a state of repair to be let as offices or used otherwise by the Society.

The difficulty experienced by the contractor, Mr. Ritchey (Richey) in obtaining stone for the façade to the East Wing had been happily overcome and the architect was confident that the whole building would be completed by Christmas.

The Records do not show when the work was completed, but in June of the following year, June 20, 1846, Easter Term, 9 & 10 Vic., the Committee of Economy were authorized to let such of the apartments in the Centre Building as were not required for the

purposes of the Law Society. This authorization was repeated November 5th, 1849. The whole original contract was for £6,700 (\$26,800), but alterations, additions and improvements together with fitting up the interior of the Courts, &c., swelled the account to £8,537 7s. 1d. (\$34,149.42).

Students were not boarded in Osgoode Hall after the troops took possession in 1838; but we find the rooms rented to members of the Society: some of them did not pay their rent and, at least once, instructions were given to sue them, Hilary Term, 14 Vic., February 15th, 1851.

The Building erected in 1844-1846 consisted of a West Wing, like the original East Wing, and a centre building (the Library) connecting the two Wings, and surmounted by a low dome. Lightning rods were put on in 1851 and the rooms were numbered also in the same year: gas was put on in 1852. "The present high price of provisions" induced the Society to give a bonus to the caretaker in 1854, February 10, Hilary Term, 17 Vic.—thus early H.P.L. had begun its deadly work.

II.

By the organization, in 1849, of the Court of Common Pleas and the reorganization of the Court of Chancery, a much greater demand was made for accommodation in the Hall—there was no little friction between the Government and the Courts on one hand and the Law Society on the other; and at length, in 1855, it was determined to build an addition. It had been intended to extend the West Wing northward much as it is at present, but that was abandoned, and ultimately the enlargement of the Centre was approved of June 10, 1855, Easter Term, 18 Vic. Plans were obtained from Messrs. Cumberland and Storm, the Society's architects, and submitted to Convocation November 28th, 1856, Michaelmas Term, 20 Vic. It was estimated that what was intended to be done in the

rear of the centre, providing for Courts, vaults, &c., would cost £13,000 (\$52,000): the centre of the front £11,000 (\$44,000): alterations of front and returns of wings to complete the façade in combination, £2,000 (\$8,000), in all £26,000 (\$104,000). The plans were adopted, the architects directed to proceed with working plans and specifications and a committee was appointed to supervise. The improvements began without delay and the building continued from 1857 to 1860, resulting in the Osgoode Hall as it was before the recent improvements in the West Wing. The dome was removed, a façade of cut stone set up, and the interior wholly remodelled.

NOTES TO PART III.

¹Wilson's Hotel, or the British Hotel as it was also called, was a frame building, a storey and a half high, on the south-east corner of Queen and Gate Streets, Newark (Niagara-on-the-Lake), which was standing till about half a century ago. It was built and owned by John Wilson, and was well-known as a meeting place, especially for the Masonic Fraternity.

²Called after William Osgoode, the first Chief Justice of Upper Canada. One historian makes him an illegitimate son of George III. (I can find no authority for the scandalous story), and certainly he was *persona grata* with that King. After being Chief Justice of this Province 1792-1794, he became Chief Justice of Lower Canada 1794-1801. He then returned to England, where he died in 1824, aged 70. He left no mark on our jurisprudence: he never sat in the Court of King's Bench or elsewhere than a Court of Nisi Prius or Oyer and Terminer, unless possibly in the Court of Appeal.

The "Church" was St. James' Church, then, as now, on the north-east corner of King and Church Streets. I have not been able to fix definitely the lot which the Society had bought: as the Society was not yet incorporated the deed would not be in its name. Probably it was on the south-east corner of King and Church: but it is quite possible that the north-west corner, afterwards Court House Square, is meant.

It is said that the name Osgoode Hall was suggested by Attorney General Robinson.

³It is impossible not to recognize the mind and hand of Dr. Baldwin in this resolution.

⁴On the north-west corner of King and Simcoe Streets, opposite the former Government House and afterwards the Upper Canada College grounds: now all built upon.

⁵This was Andrew Mercer, who survived till 1871: his estate gave rise to the well-known Constitutional litigation, 5 S.C.R. 538: (1883) 8 A.C. 767. His name is rendered immortal by the "Mercer Reformatory," built by the Ontario Government out of part of the property he left behind—we have no means of knowing whether this was or is pleasing to him or if he would have liked that kind of immortality.

No record exists of the lot offered by Mr. Mercer: he lived on Bay street, on the east side between Front and Wellington Streets, and near the residence of the Honourable Robert Baldwin in the same block.

⁶Hagerman (afterwards Mr. Justice Hagerman), Small (afterwards Treasurer), Washburn (Simon Washburn, a well-known Toronto Barrister), Bidwell (Marshall Spring Bidwell the Reformer who, accused of treason in 1837, "abjured the Realm" and went to New York).

⁷Some account of the Library will be given in another chapter—the Court House was on the north-west corner of King and Church Streets.

⁸This squints at the Rule passed 11 January, 1828, requiring every student-at-law to keep four Terms in York.

⁹The Parliament Buildings on Front Street, between John and Peter Streets—Parliament had, 1829-1832, sat in the Court House (begun in 1824) near the north-west corner of King and Church Streets: but moved into the new building in 1832 or 1833.

¹⁰John Doel's brewery was behind his house on the lot at the north-west corner of Bay and Adelaide Streets. Peter Free-land had a soap and candle factory on the south side of Palace (Front) Street a little east of Yonge Street Wharf.

"The custom of drinking intoxicating liquor was very general and a large majority of the people used either spirits (generally whiskey), beer or wine at the dinner table. Even among the Methodists * * * who were supposed to be teetotalers, the use of beer as a beverage was quite common. In fact, Messrs. John Doel, Joseph Bloor and George Rowell, all Methodists, were brewers." Pearson's Recollections, &c., p. 233. (See Note 11.)

¹¹"Toronto of Old," by the Reverend Henry Scadding, D.D. (Toronto, Adam Stevenson & Co., 1873, 8vo), p. 312. The low

building running to the west, I do not find noted anywhere except in "Recollections and Records of Toronto of Old," by W. H. Pearson (Toronto, William Briggs, 1914), p. 59. "On the West of Chestnut Street was the Centre building and east wing of Osgoode Hall, the west wing not having been built until a number of years afterwards." Mr. Pearson is apparently speaking of 1839-40.

¹²This was Captain John Simcoe Macaulay, son of Dr. Macaulay and brother of Sir James Buchanan Macaulay, Chief Justice, etc.: he married a daughter of Chief Justice Elmsley and lived south of Albert Street (then Macaulay Lane).

¹³The troops occupying these barracks were stationed in Toronto by reason of the Mackenzie Rebellion of 1837-38.

PART IV.

THE LIBRARY.

THE LIBRARY

CHAPTER XV.

BEFORE THE BUILDING OF OSGOOD HALL.

The first attempt at a library was made at the meeting 16th January, 1800, at which were present Solicitor General Gray, Angus Macdonell, William Dummer Powell, Jr., and William Weeks (Weekes). The Attorney General, John White, had been killed in a duel a few days before (January 4th): at that meeting it was agreed "That the Books of the late Attorney General should be purchased by the Society if they were to be disposed of." Nothing came of this,¹ and we find in "The Oracle" of March 22nd an advertisement by the executor of White's will, the Honourable Peter Russell,² of the sale without reserve on April 11th of "all the law and other books belonging to the deceased, catalogues of which will be prepared," William Cooper³ being the auctioneer.

Nothing further was done or projected about a Library for the Society for more than a quarter of a century.

On April 29th, 1826, Easter Term, 4 Geo. IV., Convocation resolved that the Treasurer (Dr. William Warren Baldwin) should prepare a memorial to Sir Peregrine Maitland, the Lieutenant-Governor, representing their desire for buildings "Wherein to transact business, collect and deposit a library and to accommodate the youth studying the profession," and asking for a portion of the old site of the Public Buildings,⁴ then abandoned—the Society agreed to erect such a Building as should be "a credit to the Town."

The Legislative Council recommended that a grant should be made of six acres: but the Law Society, January 9th, 1827, Hilary Term, 7 Geo. IV., determined to ask for between fifteen and twenty acres—and the same day directed the Treasurer to obtain an estimate of the expense for building the South Wing of a plan he had procured, the estimate for Portico and Vestibule in one sum and that for Hall, Library, &c., in another.

On the same day it was “resolved that the Treasurer (Dr. William Warren Baldwin), the Attorney General (John Beverley Robinson), the Solicitor General (Henry John Boulton), and Mr. Macaulay* (afterwards Sir James Buchanan Macaulay, C.J.C.P.), be a Committee to determine what books shall be purchased for the Society—not exceeding in value £200 (\$800) and that the said committee be directed as soon as convenient to procure the same.”

The proposition for a grant of land to the Society came to nothing: but the books were selected. The Solicitor General went to London in the year 1827, and there bought books amounting to £291 7s. 9½d. Some he sent to the Treasurer and some the Solicitor General reported to the Society, November 17, 1827, he still had in his possession.

The Treasurer was directed “to procure a case or cases for the safekeeping of the books and * * to contract (if practicable) with the Court keeper for his care of the books in a chamber of the Court House⁶ in case permission can be obtained from the Magistrates.” This was effected, as we find a resolution adopted November 14th, 1828, Michaelmas Term, 9 Geo. IV., that after that term the Seal, Books and other papers belonging to the Society should be transferred “to the room occupied by the Society as a Library in the Court House * * * and that in future all Convocations shall be held in the Library.” On the same day “Mr. Taylor, the Reporter, presented the

Society with a copy of his Reports—the Book was received with thanks and ordered to be deposited in the Library.”⁶

It does not appear when or how the Solicitor General handed over to the Society the books which he had not sent to the Treasurer; but on November 3rd, 1829, Michaelmas Term, 10 Geo. IV., it was resolved that “the Treasurer (George Ridout) prepare a Catalogue of the Books of the Society and procure two hundred copies of such Catalogue to be printed for distribution among the profession.”

December 9th, 1829, the Treasurer, George Ridout, had the first Catalogue of Books belonging to the Law Society of Upper Canada printed at York by Mr. R. Stanton, the King’s Printer. This shows the Library at that time to have consisted of 264 volumes, chiefly Reports.⁷

November 13th, 1829, the Treasurer was instructed to “apply to the Court for an order to deposit the Statutes at Large purchased by Government for the use of the Court in the Library of the Law Society.”⁸

On the same day the Treasurer was authorized “to remove the books, cases and property of the Society to as convenient a place as possible till the Hall (i.e. Osgoode Hall) be fitted for their reception and * * * procure another Book Case on a plan uniform with the present.”

In Easter Term, April 20, 1830, however, it was decided not to move the books, &c., till the Hall should be completed—and it was resolved “that every Book required at Court be returned during the same day it is borrowed, in default whereof the person neglecting to do so to be restrained from taking away any books during the same term.” Mr. John Ridout was in the absence of the Treasurer placed in charge of the Library.

CHAPTER XVI.

THE LIBRARY AT OSGOODE HALL.

June 3rd, 1831, Trinity Term, 1 & 2 Wm. IV., the building committee were "authorized to remove the Library, Cases, Cabinet and Property of the Society to Osgoode Hall as soon as the same is sufficiently furnished."

November 19th, 1831, Michaelmas Term, 2 Wm. IV., the Attorney General (Henry John Boulton) moved that £200 be appropriated for the purchase of books—this was "negatived in consequence of the want of means," which would seem to be a sufficient reason. At the next meeting, February 6th, 1832, Hilary, 2 Wm. IV., which was the first meeting of Convocation in Osgoode Hall, the Treasurer (George Ridout) suggested that if it were deemed expedient to borrow to pay the debts of the Society, "a small sum might be added to be appropriated to the purchase of Books more than two years having elapsed since any sum had been devoted to that essential object." This suggestion was not acted upon.

In the same term Dr. Baldwin presented to the Society a number of books for the Library, viz.:—Robertson's Charles 5th, 4 vol.; Robertson's America, 3 vol.; Hume's History of England, 8 vol.; Paley's Philosophy, 2 vol.; Montesquieu Spirit of Laws, 2 vol.; Duncan's Cicero, 1 vol.; Pope's Homer, 7 vol.; Pope's Works, 6 vol.; Johnson's Lives of the Poets, 4 vol.; the Statutes of Upper Canada as passed, originally published, 5 vol.; Statutes of Upper Canada Revised, 1 vol.; West's Simboleography, 1 vol.; Dalton's Justice of the Peace, 1 vol.; Ridgeway's Reports, H. L. Ireland, 3 vol.; Freeman's Reports, 2 vol.—50 volumes in all.⁹ It was ordered that the series of Statutes should be continued regularly.

The appointment of a Librarian began to be discussed about this time: but no one was appointed to

that office till Hilary Term, 2 Wm. IV., February 13th, 1833, when James Martin Cawdell was appointed Secretary and Librarian.

In Easter Term, 2 Wm. IV., April 28, 1832, two copies of Blackstone's Commentaries, two of Thompson & McFarlane's late edition of the Provincial Statutes, one copy of Archbold's Practice and one of Archbold's Forms were directed to be bought for the Library: except the last, which "could not be bought in York;" these were procured before the next meeting, June 19th, 1832. Several books for conducting the examinations of students were also bought at the same time, Cicero, Virgil, Cæsar, Ovid, Euclid, and Ainsworth's Latin Dictionary: June 29, a copy of Chance on Powers was bought from Mr. Thomas Hyde for £2 5s. Sterling: in February, 1833, Archibald McLean, Speaker of the Legislative Assembly, presented the Journals of the Second Session of the eleventh Parliament and the Chief Justice (John Beverley Robinson), Speaker of the Legislative Council, promised to move the Council to send two copies of their Journals also (this was ordered by the Legislative Council almost at once): in the same month it was decided to keep a book for the registration of all gifts and benefactions to the Society¹⁰ and that there should be placed on the inside of the front cover of all books presented to the Library a memorandum containing the name of the donor.¹¹ February 12th, 1833, Hilary Term, 3 Wm. IV., Robert Baldwin presented Willoughby's Family Bible in two volumes folio, "An edition of the Common Prayer Book of the Protestant Episcopal Church of England," and also a minion octavo Bible and a smaller edition of the Prayer Book, "expressly for the use of the House."¹² These were gratefully accepted, but there is no record of "the House" ever using them.

On the same day it was decided to borrow £3,000 (\$12,000) for building purposes, &c., and that a sum of £125 (\$500) out of that loan should "be applied to

the augmentation of the Library." Messrs. Draper (afterwards Chief Justice Draper) and Robert Baldwin were appointed a Committee to prepare a list of "Works to be purchased for the Society as far as the said £125 shall extend." A good list of Reports was prepared, 75 volumes costing (as estimated) £96 17s.—this list was considered February 16th, 1833, and referred to a committee, who sat in vacation and approved of the list. The Treasurer wrote to Solicitor General Hagerman, who was then in England, to purchase the books. The list will be found in Note 13.

The Books were bought by Hagerman, as appears by a letter from him (dated from 31 St. James Street, London, 4th January, 1833) to Dr. Baldwin, carefully boxed up and consigned to Mr. McGill of Montreal—they had not arrived by September (as Mr. McGill writes), nor by February, 1834 (according to the Treasurer's Report). By this report it appears that they were shipped to the care of Messrs. Gillespie, Moffatt & Co.; and it turned out that they were lost at sea. The order was re-executed in the summer of 1834 and the books were received in the best of order during the vacation between Trinity and Michaelmas Terms of that year—the books having been fully insured, the Society suffered no loss—the list of books actually received varies a little from the list prepared by the Committee.¹³ The remainder of the books continued to arrive, but subsequent orders went forward so that by the end of the year 1839 there were still books on order to the value of £100.

Simon Washburn,¹⁴ in Hilary Term, 3 Wm. IV., February 12, 1833, gave a number of books: Plutarch's Lives, 6 vol.; British Poets, 1 vol.; Hammond's Nisi Prius, 1 vol.; do., Charter Parties, 1 vol.; Starkie's Criminal Pleading, 1 vol.; Barbauld's Selections, 3 vol.; Repertorium, 1 vol.; Watt's Logic, 1 vol.; Law of Forfeiture, 1 vol. The same day James E. Small¹⁵ gave Wood's Civil Law, 1 vol.; Ordinances of Lower Canada, 1 vol.; Swinburne on Wills, Edit. of 1640, 1 vol.;

Brownlow & Goldsborough, Edit. of 1651, Quarto, 1 vol.; Fowler's Exchequer Practicé, 2 vols.

April 23rd, 1833, Chief Justice Sir William Campbell ¹⁶ donated the Statutes at Large from Magna Charta to near the end of the reign of George III., 28 volumes, and the Encyclopædia Britannica, 19 volumes.

In April, 1833, Robert Baldwin Sullivan ¹⁷ handed to the Law Society, Orfila's "Leçons de Medecine Legale" (which of course the Secretary spells *Medicine*) in 3 vols., which Dr. Dunlop ¹⁸ had left with him on departing for England, to be presented to the Law Society and which Mr. Sullivan had had suitably bound. On the same day Robert Baldwin presented some Parliamentary Journals and Reports and also Willis' Equity Pleadings ¹⁹, Wilkinson's Practice of the Chancery of Durham, and Boyer's French and English Dictionary.

May 4th, 1833, William Henry Draper (afterwards Chief Justice) presented for Dr. Dunlop, Fodere's Medical Jurisprudence in 6 volumes.

November 7th, 1833, Hon. Augustus Baldwin ²⁰ presented through his brother, the Treasurer, Dr. Baldwin, "Playfair's Baronetage of Ireland, Scotland and England, 4 vol., large 4to, in boards"—this was ordered to be bound in Russia. On the same day Robert Baldwin presented "Goldsmith's Works, 4 vol., and Warburton's Sermons preached before the Honble. Society of Lincoln's Inn, 2 vol."

May 3rd, 1834, John Powell ²¹ presented the "Year Book of the Reigns of Edward V., Richard III., Henry VII. and Henry VIII." as "far more fitted for a public than a private library": June 28th, 1834, William Dummer Powell, retired Chief Justice, presented "Les Loix Civiles," a fine folio, two volumes in one.²²

In addition to those already mentioned, the following benefactions appear in the Register: May 10, 1833, from Chief Justice Robinson,²³ Report of the Trials in Upper and Lower Canada of the Offences committed in the In-

dian Territory, 1 vol.²⁴; Mitford's Pleadings in Chancery, 1 vol.; Trial of the Regicides, 1 vol. June 22nd, 1833, the Library received from George S. Boulton, Sullivan's Lectures.²⁵ No entry appears in the Register after June 28th, 1834.

An application was made to Sir John Colborne, Lieutenant Governor, in November, 1834, to ask for copies of the Reports of the Records' Commission for the Society: Sir John sent on the request to the Home Authorities. This was not complied with at the time, and August 5th, 1839, Michaelmas Term, 3 Vic., the Treasurer was instructed to buy for the Society at the price of £15 cy. (\$60) the two volumes of "The Appendix to Reports from the Commissioners appointed by His Majesty respecting the Public Records of the Kingdom, &c." But almost ten years later, Trinity Term, 7 & 8 Vic., June 22, 1844, the Governor General²⁶ presented "the Books published by the Record Commissioners to be perpetually preserved in the Law Society's Library.

Through Robert Baldwin enquiries were made in the summer of 1833 for Valpy's Classics, and it was found that a complete set of the Delphin and Variorum Classics, 160 volumes in blue cloth and gilt lettering, could be obtained for 36 guineas, originally published in boards at 141 guineas: large paper copies bound in a similar manner making 181 volumes at 56 guineas, originally published at 282 guineas. Dr. Harris, Principal of Upper Canada College, who had procured this information, was thanked, but the books were not then ordered.²⁷ August 7th, 1837, Simon Washburn gave the Reports of the Commissioners of Factories Inquiry to be placed in the Library.

CHAPTER XVII.

THE LIBRARY—REMOVED FROM OSGOOD HALL.

After the abortive rebellion of 1837 and during the troublous times following it, the Government, as we have seen, used Osgood Hall as a Barracks: accordingly a room was obtained for the Library in the East Wing of the Parliament Buildings, which had formerly been occupied by the Court of King's Bench; and beginning August 6th, 1838, Convocation was held in that room for a time.

At the instance of the Treasurer, Vice-Chancellor Jameson, Clarendon's History of the Rebellion was ordered November 12th, 1839.

The Report of the Committee of Oeconomy presented February 8th, 1840, Easter Term, 3 Vic., contained the following: "That the allowance of Fifty pounds per annum by way of salary to the Sub-Treasurer, Secretary, and Librarian, which was made by the Treasurer on his own authority during the confusion consequent on the late Rebellion and the subsequent occupation of Osgood Hall for the public service, appears never yet to have received the formal sanction of Convocation. The Committee therefore recommend the subject to the consideration of the Benchers, and in doing so beg leave to call their attention to the expediency of increasing this allowance which the Committee do not conceive to be adequate to the duties of the united offices of Sub-Treasurer, Secretary and Librarian, all which are now performed by the same gentleman—this has become necessary as since the removal of the Society from Osgood Hall that officer has to find his own Chambers and Commons, which formerly were supplied him by the Society gratis." The Committee had also ordered an accurate inventory of the Library to be made and valued it at £800—the financial statement showed an expenditure of

£503 6s. 8d. on the Library during 1839, it having been valued at £296, December 31, 1838.

February 8th, 1840, the Salary of Mr. Cawdell as Sub-Treasurer, Secretary and Librarian was fixed at £100 (\$400) per annum from January 1st of that year and so long as the offices should be united. In this year the system was introduced of refusing to allow any of the Books to be taken out of the Library.

No expenditure was made for books in 1840 and the Library continued to be valued at £800.

In Hilary Term, 5 Vic., November 1st, 1841, Attorney General Draper gave notice of a motion to appropriate £150 ey. (\$600) for the improvement of the Library: nothing was done that year, but February 19th, 1842, the matter of books to be sent for, was placed in the hands of the Committee of Economy; and that Committee were, June 25th, authorized to expend "to the extent of £30" for assistance to Mr. Cawdell during his illness. Mr. Cawdell died in the vacation between Trinity Term, 5 & 6 Vic., and Michaelmas Term, 6 Vic.; and Mr. Maingy, who had been employed by him as assistant, was placed in charge for the time being.

During the lifetime of Mr. Cawdell the second Catalogue of the Library was printed, showing some 380 volumes—this Catalogue from internal evidence was almost certainly printed late in 1834 or in 1835; but manuscript notes on the copy in the General Library at Osgoode Hall bring the list up to 3rd March, 1842, when there appeared about 850 volumes.²⁸

Cawdell bequeathed to the Library, Crabbe's Synonyms and Walker's Pronouncing Dictionary, which were delivered by his executor, the Treasurer, Hon. Levius P. Sherwood, retired Justice of the Queen's Bench. In Michaelmas Term, 6 Vic., Convocation decided to erect a monument over his grave in St. James' Churchyard, which was done. He had been an officer

in the Imperial Army and was a man of some literary talent; he published for a short time in Toronto a Magazine, the "Rose Harp," most of its contents being written by himself. He is said to have owed his situation in the Law Society to the friendship of James B. Macaulay.

Out of a number of applicants, the Bench, August 2nd, 1842, Michaelmas Term, 6 Vic., selected Mr. Hugh Nelson Gwynne, B.A. (T.C.D.), to succeed Mr. Cawdell and to fill the triple office of Sub-Treasurer, Librarian and Examiner for Matriculation; and a few days later granted Mr. Maingy £20 for his services in addition to the £20 already given him.

November 19th, 1842, Hilary Term, 6 Vic., the sum of £200 was voted to increase the Library, the Treasurer (Mr. Justice Sherwood), the Vice-Chancellor (Robert Sympson Jameson), and Mr. William Henry (afterwards Chief Justice) Draper to be the Committee to select the same; in the following August an account was presented in excess of the amount appropriated but the Treasurer was directed to pay it, August 12th, 1843.

CHAPTER XVIII.

THE LIBRARY—RETURNED TO OSGOOD HALL.

In Hilary Term, 7 Vic., November 15th, 1843, the sum of £300 was placed at the disposal of a Committee to increase the Library, the Treasurer (Hon. William Henry Draper), Mr. (afterwards Chancellor and Chief Justice) Spragge, and Mr. (afterwards Mr. Justice) Burns to be the Committee.

In Easter Term, 7 & 9 Vic., June 19th, 1845, the Students petitioned that the Library should be kept open in the evening and the Treasurer (Vice-Chancel-

lor Jameson) was directed to keep "the Library open two hours in the evening for the use of the students members of the Society."

August 5th, 1845, Trinity Term, 9 Vic., the Committee of Economy ("Oeconomy" no longer appears) were directed to complete the series of Reports up to date and a Committee consisting of the Treasurer (Vice-Chancellor Jameson), Mr. (afterwards Mr. Justice) Sullivan, and Mr. (George Strange) Boulton was appointed to draw up orders for the regulation of the Library. I do not find that they ever drew up such orders or reported to the Society in the matter.

The Library had by June 20th, 1846, become so valuable that it was directed to be insured with the furniture for £2,000 (\$8,000).

The following year, February 13th, 1847, Hilary Term, 10 Vic., it was resolved that the Judges of the Queen's Bench and the Vice-Chancellor might take books from the Library upon a written application to the Librarian, and that any barrister requiring a book in Court should have the same privilege—"such book to be returned immediately after the argument and any person taking any book without such written application or failing to return them shall be debarred from the benefit of this order."

A new Committee to draw up rules and regulations for the Library was appointed the same day: Messrs. Spragge, Blake (afterwards Chancellor), and Esten (afterwards Vice-Chancellor). They reported June 26, 1847, recommending, 1—that the Library should be open from 10 a.m. to 5 p.m. and as much later as either Superior Court should sit; 2—that no conversation should be allowed; 3—"that no person bring his hat into the Library nor place his great coat, cloak, &c., on any table or chair therein." Rules 4 and 5 referred to taking books out of the Library, 6 and 7 prescribed the duty of the Librarian, and 8 the privileges of Judges and Barristers, practically the same as already

mentioned—the Report was adopted July 31, 1848. In Trinity Term, 12 Vic., the Treasurer, Robert Baldwin, presented to the Society for the Library 33 volumes—Edicts, Royal Ordinances, Declarations and Decrees, 2 vol. (Decrees of Council of State of Canada before the Conquest); Collection of Acts of Imperial Parliament, &c., 1760-1834, 1 vol.; Statutes of Lower Canada, 1792-1836, 9 vols.; Ordinances of Special Council in Lower Canada, 1838-1841, 3 vols.; Index to Statutes of Lower Canada to 1841, 1 vol.; Journals of Canadian Commons from Union to 1847, 17 vols.

He had also during the previous vacation given the Librarian a copy of the Revised Statutes of Lower Canada up to the Union, and some odd volumes of the Journals of the House of Assembly of Upper Canada.

In September, 1850, Trinity Term, 14 Vic., the Honourable John Beverley Robinson presented the Society with a wampum belt, which has apparently disappeared. The same day £200 was appropriated to buy books for the Library, and the Treasurer (Spragge), Mr. (Robert) Baldwin and Mr. (John Hillyard) Cameron were appointed a committee to select them—the books were ordered and received, but the list is not extant. The Report for the year 1850 shows an expenditure (in addition to the £200 on Library and office) of £119 19s. 1½d., but no doubt that was for salaries, &c.

In 1851 an expenditure of £146 6s. 10d. was made on "Library and Office," which does not leave much, if any, margin for books.

June 19th, 1852, an order was made "that the Library of Osgoode Hall during Easter and Trinity Terms be kept open from 8 o'clock in the morning until 9 o'clock in the evening, and during Michaelmas and Hilary Terms from 8 o'clock in the morning until 5 o'clock in the evening"—this was, of course, for the accommodation of Counsel arguing cases in Term. November 27th, 1852, the Secretary was directed to

secure an estimate for lighting the Library and other parts of the House with gas.

December 3rd, 1853, Michaelmas Term, 17 Vic., £100 was appropriated for books and a committee of Mr. (afterwards Chief Justice Sir Adam) Wilson, Mr. (afterwards Chancellor) Van Koughnet, and Mr. (afterwards Sir Oliver) Mowat were appointed a committee to select them.

In the following year, February 16th, 1855, Hilary Term, 18 Vic., the Treasurer (Robert Baldwin) was directed to order for the Library, the Law Library published by S. Johnson of Philadelphia, beginning with the current volume; The Law Reporter, published at Boston, beginning with the current volume, and The Upper Canada Law Journal: the next day Mr. H. N. Gwynne was granted £50 in addition to his salary for 1855. In June, 1855, a further sum of £500 was voted for books, Dr. (afterwards Mr. Justice) Connor, Mr. (afterwards Mr. Justice) Gwynne, and Mr. (afterwards Sir Oliver) Mowat being the committee.

September 8th, the following periodicals were ordered: The Irish Law and Equity Reports, The Law Times and Law Times Digest, as also a Portfolio for the Jurist.

November 27th, 1855, the Law Students asked that the Library might be thrown open and lighted for their use from 7 p.m. to 11 p.m.—Convocation ordered that “Sundays and Holydays excepted” the Library should be open from 8 a.m. to 10 p.m., proper light and heat being provided at the expense of the Law Society. The Steward was to attend and receive £10 extra for his services.

A new Rule, made February 12th, 1856, closed the Library at 5 o'clock on Saturday unless some Court should be sitting—the same day the salary of Mr. Gwynne was fixed at £175 (\$700): in 1855 an expenditure on Library and office is noted of £509 14s. 5d.

In June, 1856, it was ordered that there should be purchased for the Library one copy of "the Charters, the Provincial Statutes and Reports of decisions of the Courts of each of our Sister Colonies in the Western, Eastern and Southern Hemispheres": this was moderately successful. The Treasurer, Robert Baldwin, wrote to the Law officer of each of the Colonies, 44 in number, July 14, 1856, and received a number of favourable replies.

In Michaelmas Term of the same year, 1856, at a meeting held November 29th, it was resolved to adopt and act upon the plan of Cumberland & Storm, architects, involving amongst other things an expenditure upon "the Centre of the Front providing the Library and the remainder of the Public Offices," £11,000, subject to the approval of the Governor-General, which was given.²⁹ Mr. Cumberland was allowed to borrow from the Library during the time the work was going on the ponderous "British Architectural Antiquities" in 5 volumes.

NOTES TO PART IV.

¹I have carefully examined the books in Osgoode Hall Library, which were published before the death of White: none of them bears any trace of having been his at any time. There is one, Owen's Reports (1656) which bears the signature of "R. Firth" and which may have come from William Firth, the third Attorney General of the Province, who got into trouble with Lieutenant-Governor Gore. Another, Siderfin's Reports (1783) bears the signatures of John Lowe Ferrand and Archibald McLean the Chief Justice.

²Peter Russell was for a time Administrator of the Government of the Province and obtained no little notoriety from the custom he had of granting, as head of the Government, Crown lands to himself as a private individual. He also sat at times under a Special Commission as a Judge of the Court of King's Bench: Mr. (afterwards Chief) Justice Powell with whom he sat

states that Russell knew no law or practice, and acted as Judge simply for the money there was in it—John Mills Jackson in his Pamphlet “A View of the Political Situation of the Province of Upper Canada,” London, 1809 (a work declared by the Legislature of Upper Canada to be a libel on the Province but containing too much truth) speaks of him as “so infirm that he can seldom attend” the sittings of the Court of Appeal of which he was a member. The lands which he acquired, *helluo agrorum*, passed on his death to his sister, from whom they went to Dr. William Warren Baldwin and his family.

³William Cooper was a man of some prominence in those days: and was afterwards the proprietor of Cooper’s Wharf at the foot of Church Street, later known as Maitland’s and Sylvester’s Wharf. Of course there was at that time no Esplanade and the wharf ran out from the beach. Robertson’s Land Marks of Toronto, vol. 1, p. 245.

⁴These were at the foot of Berkeley Street on a site now occupied by the Gas-Works. The original Public Buildings on the same site were built in 1794-5 and were of brick: burnt by the Americans in 1813, they were replaced in 1818 by buildings also of brick, which were burnt in 1824, December 20th. The next Parliament Buildings were on Front Street, between John and Peter Streets.

⁵The Court House at that time stood in “Court House Square,” in the block north of King St. and between Toronto and Church Streets (built in 1824-26 with the adjoining Jail).

⁶This volume is still in the ownership of the Law Society, preserved with religious care under lock and key. Another copy of the same edition, also owned by the Society, was the property of Chief Justice Archibald McLean.

⁷This Catalogue is exceedingly rare: I have been able to find only one copy. It is in the custody of the Librarian at Osgoode Hall: it is of two pages of print, foolscap size, and has the blank leaf attached. It seems to have been folded for delivery and is addressed “To D’Arcy Boulton, Jr., Esq., Benchers L.S., &c., &c., &c.” I add here a copy:—

A CATALOGUE
OF
BOOKS,
BELONGING TO THE LAW SOCIETY,
OF UPPER CANADA.

A.	Vols.		Vols.
Aleyn's Reports	1	Dowling & Ryland's Re-	
Anstruther's Reports	3	ports	8
Ambler's Reports	1	Dyer's Reports	3
Anderson's Reports	1	E.	
Andrews' Reports	1	Equity cases abridged	2
Adams' Reports	2	Evans' Statutes	8
B.		F.	
Baeon's (Lord) Works.....	10	Fortescene's Reports	1
Barnardiston's Reports	2	Finch's Reports	1
Barnardiston's Reports in		Fitzgibbon's Reports	1
Chancery	1	Fitzherbert's Abridgement..	1
Barnewall & Alderson's Re-		G.	
ports	5	Gilbert's Reports in Chan-	
Barnewall & Cresswell's Re-		cery	1
ports	7	Godbolt's Reports	1
Broderip & Bingham's Re-		Gilbert's Cases in Law &	
ports	3	Equity	1
Brownlow & Goldesboro's		Gow, Neil, on Partnership..	1
Reports	1	H.	
Brown's Parliamentary		Holt—Cases in time of	1
Cases	8	Holt's Nisi Prius Cases....	1
Barnes' Notes	1	Hardwick—Cases in time of	1
Bendloe's Reports	1	Hawkins' Pleas of the	
Benloe & Dalison's Reports	1	Crown	2
Bridgman's Reports	1	Hobart's Reports	1
Bulstrode's Reports	1	Hardress' Reports	1
Brooke's Abridgment	1	Hetley's Reports	1
C.		J.	
Carthew's Reports	1	Jones', William, Reports.....	1
Comberbach's Reports	1	Jones', Thomas, Reports.....	1
Comyn's Reports	2	Jenkins' Reports	1
Coke's Reports	7	K.	
Coke's 1st Instit. notes by		Keble's Reports	3
Hargrave and Butler	2	Kelyng's Reports	1
Coke's 2nd, 3rd and 4th In-		Keilwey's Reports	1
stitutes	2	L.	
Croke's Reports	4	Latch's Reports	1
Comyn's Digest	8	Lutwyche's Reports	2
Cruise's Digest	6	Levinz's Reports, 1st, 2nd	
Chitty's Reports	2	and 3rd, in	2
Code Napoleon	1	Leonard's Reports	1
D.		Lane's Reports	1
Douglass' Reports	2	Littleton's Reports	1
Douglas on Elections	2	Lofft's Reports	1
		Luders on Elections	3

M.	Vols.		Vols.
Manuscript Precedents	8	Saville's Reports	1
Marshall's Reports	2	Skinner's Reports	1
Maule and Selwyn's Reports	5	Smith's Reports	3
Moore's (Sir Francis) Re- ports	1	Style's Reports	1
Moore's, John B., Reports..	10	Starkie's Nisi Prius Cases..	2
		Sheppard's Touchstone	2
N.		T.	
Noy's Reports	1	Taunton's Reports	8
O.		Talbot—Cases in time of...	1
Owen's Reports	1	Taylor's Reports in K.B. of U. Canada	1
P.		Tidd's Practice, 8th edition	2
Parker's Reports	1	Tidd's Appendix, 6th Edi- tion	1
Palmer's Reports	1	V.	
Pollexfen's Reports	1	Ventris' Reports	1
Popham's Reports	1	Vaughan's Reports	1
Phillimore's Reports	2	Vesey's (Sen'r) Reports...	2
Peckwell on Elections.....	2	Viner's Abridgment	24
Pratt's Digest	1	W.	
Pothier on Obligations	2	Willes' Reports	1
R.		Wightwick's Reports	1
Rolle's Reports	2	Wilmot's Opinions	1
Rolle's Abridgment	1	Winch's Reports	1
Raymond's (Sir Thomas) Reports	1	Y.	
S.		Yearbooks, 11 vols. in.....	10
Siderfin's Reports	1	Yelverton's Reports	1
Shower's Reports	2	Vols.	264
Sayer's Reports	1		

GEORGE RIDOUT,

Treasurer.

York, 9th Dec., 1829.

York, printed by R. Stanton.

(The spelling of the original is retained.)

^sIt does not appear how and when the Statutes at Large in the Library were procured, but as there is no trace of any set in the King's Bench, it is probable this attempt was successful.

^sThese volumes presented by Dr. Baldwin are nearly all still in the Library—with the possible exception of Dalton's Justice of the Peace, they were probably brought from Ireland by Dr. Baldwin when he came from Ireland to Upper Canada with his father in the closing years of the 18th century. Duncan's Cicero seems to be lost, as also one volume of Pope's Homer and one of Johnson's Lives.



¹⁰This Register of Gifts and Benefactions is a thick folio with index-alphabet. The first entry of benefactions is of this "Gift and Benefaction": the last entry is on June 28, 1834: after this date the benefactions, if any, were not specially entered. The remainder of the book is taken up with a Catalogue in manuscript and one pasted in in print (that of 1882).

¹¹This "memorandum" can be seen in several of the books presented by Dr. Baldwin—*e.g.* some of the earlier Statutes of Upper Canada.

¹²Hon. Robert Baldwin's gifts were for the use of "the House": *i.e.*, not Convocation, but the body of students, &c., rooming in Osgoode Hall: these books are all extant though not in common use.

¹³List of additional Books for the Library of the Law Society—October, 1834. Books sent for and received to complete present sets—as per list 23 April, 1833:

	No. of vols.	Which vol.
Barnwall & Creswell's Reports	3	8th, 9th, 10th
Douglas Reports	2	3rd, 4th
Dowling & Ryland's Reports	1	9th
Maule & Selwyn	1	6th
J. B. Moore's Reports	2	11th, 12th
Phillimore's Reports	1	3rd
Tidd's Two Supplements	1	
Runnington's Edition of Ruffhead's Statutes at Large	1	8th
Other Books sent for and received as per list of 23 April, 1833:—		
Barnwall & Adolphus Reports	4	
Roscoe on Real Actions	2	
Booth on Real Actions	1	
Fearne's Contingent Remainders	1	
Sugden on Estates	2	
Leach's Crown Cases	2	
Russell & Ryan's Crown Cases	1	
Manning's Exchequer Practice	1	
Supplement to Vesey Senior	1	
Vesey's, Junior, Chancery Reports	20	
Merivale's Reports	3	
Swanston's Reports	3	
Jacob & Walker's Chancery Reports	2	
Russell's Chancery Reports	4	
Russell's & Mylne's Chancery Reports	1	1st
East's Pleas of the Crown	2	
Russell on Crimes	2	

Books ordered as per list of 23 April, 1833, but not received:

Toller's Law of Executors.
 Lord Raymond, 3 vol.
 Ryan & Moody's Crown Cases.
 Saunders' Reports, 3 vol.
 Tremaine's P.C.
 Jacob's Reports, 1 vol.
 Turner's Reports, 1 vol.
 Tomlin's Law Dictionary.
 Maddock's Digest Chancery Reports.

contd..... 60

Books received but not in List of April, 1833:

Williams' Law of Executors	2
Maddock & Geldart's Reports	1
Maddock's Chancery Reports	5
Turner & Russell's Reports	1
	<hr/>
	69

Ryan & Moody's Crown Cases, 1st and 2nd parts of vol. 1..... paper copies
Moody's Crown Cases, 3rd part of 1st vol.... paper copies
Russell & Mylne's Chancery Reports, 1st part of vol. 2nd paper copies
Mylne & Keen's Chancery Reports, 1st part of vol. 1st paper copies
Russell's Chancery Reports, 1st and 2nd parts of vol. 5th paper copies
Barnwall & Adolphus K.B. Repts., 1st part vol. 5th. paper copies

Books received in 1834 for the Library:—

Appendix 1.

Douglas, 3rd and 4th	£ 2 0 0
Barn & Cres., 8, 9, 10	4 14 6
Dowl. & Ryland, 9	1 11 6
Maule & Sel., 6	1 11 6
Moore, J. B., 11 & 12	3 3 0
Philimore, 3rd	1 11 6
Tidd's 2 Supplements	0 18 0
	<hr/>
	£15 10 0

Appendix 2.

1 & 2 Barnwall & Adolphus	£ 3 3 3
Bingham, 7 vol.	10 12 6
Roscoe on Real Actions, 1 & 2 vol.....	1 15 0
Booth on Real Actions, 1 vol.....	0 16 0
Fearne's Contingent Remainder, 1 vol.....	1 5 0
Sugden on Estates, 1 & 2	1 5 0
Toller's Law of Executors	0 15 0
Lord Raymond, 3 vols.....	3 0 0
Leach's Crown Cases, 2 vols.....	2 2 0
Russell & Rylands Crown Cases, 1 vol.....	1 5 0
Ryan & Moody Crown Cases	
Saunders' Reports, 3 vol.....	3 13 6
Tremaine's P.C.	
Manning's Exchq. Practice	1 11 6
Supplement to Vesey Senr.....	1 10 0
Vesey, Jr., 19	26 5 0
Merrivale's Reports, 3 vol.	4 5 0
Swanston's Reports, 3 vol.....	4 5 0
Jacob & Walker Reports, 2 vol.....	2 10 0
Jacob & Walker Reports, 1 vol.....	1 10 0
Turner's Reports, 1 vol.	1 10 0
Russell's Reports, 4 vol.	6 3 6
Russell & Mylne, 1 vol.....	1 10 0
	—————£80 17 0
About 75 vols. <.....	£96 7 0

¹⁴Simon Washburn was a well-known practitioner in Toronto (York), "a bulky and prosperous barrister." He lived on the N.W. corner of George and Duke Streets, and was for a time Clerk of the Peace for the County of York. An accomplished skater, he was also one of the first in York to wear a monocle. Dr. Scadding tells an amusing story of him: "Toronto of Old," p. 217.

¹⁵James Edward Small, son of John Small, First Clerk of the Executive Council, was for a considerable time Benchler, part of it Treasurer.

¹⁶Sir William Campbell's donation is still in the Library.

¹⁷Robert Baldwin Sullivan was the cousin and brother-in-law of Robert Baldwin: he became in 1848 a Justice of the Court of King's Bench, after having been an active and successful politician. The books are still in the Library.

¹⁸Dr. Dunlop was the well-known "Tiger Dunlop" who was in the employ of the Canada Company. A member of the Com-

mons of Upper Canada for a time, he did much to assist Gourlay so far as that extraordinary and stubborn character could be assisted. Born 1792, he died in 1848: his work recently (1908) reprinted, "Recollections of the American War (1812-1814)," is not so well known as it should be.

¹⁹This was the production of John Walpole Willis who was a Justice of our Court of King's Bench and was "amoved" by the Lieutenant-Governor. An account of Mr. Justice Willis will be found in (1913) 49 Can. L.J., pp. 126 sqq.

²⁰Augustus Baldwin, Admiral, was the brother of Dr. William Warren Baldwin.

²¹John Powell was the eldest son of Chief Justice William Dummer Powell. For a time Clerk of the Legislative Council, he was called to the Bar: he is best known for his action in 1837 when Alderman of Toronto in riding out to reconnoitre the rebels and in giving the alarm to the too-confident Francis Bond Head: he became Mayor of Toronto the next year.

²²William Dummer Powell; Chief Justice of Upper Canada, father of the above, born 1755 in Boston, educated there, in England and on the Continent: took the Royalist side and went to England 1775: educated in the Middle Temple, he came to Canada (without Call) in 1779. After a successful career at the Bar in Montreal, he was in 1789 made First Judge of the Court of Common Pleas, Hesse District (Detroit): in 1794 he became the first puisne Judge of the Court of King's Bench: appointed Chief Justice in 1815, he resigned in 1825, dying in 1834.

²³Of course Sir John Beverley Robinson, our first Canadian born Chief Justice.

²⁴The first of these books is of much interest to students of our early history. These trials arose out of the troubles between Lord Selkirk and the Fur Trading Companies.

²⁵Sullivan's Lectures were not by our Mr. Justice Sullivan, but Lectures on Constitution and Laws of England by F. S. Sullivan, Portland, Maine, 1805.

²⁶The Governor-General in 1844 (the two Canadas were united in 1842) was Sir Charles Theophilus Metcalfe.

²⁷Valpy's Classics were in fact bought, but when does not appear: most still remain in the Library, some few have been lost.

²⁸The Second Catalogue is by no means so scarce as the first—the Law Society has three copies. It is a square octavo of 8 pages.

²⁹The Governor-General in 1856 was Sir Edmund Walker Head.

PART V.

THE REPORTS.



THE REPORTS

CHAPTER XIX.

THE REPORTS—REPORTERS APPOINTED BY THE GOVERNOR.

The first mention of Reports for our Upper Canada Courts is to be found in the statute of 1823, 4 Geo. IV., c. 3.

This recites that the publication of the decisions of the Court of King's Bench would probably result in a loss, which precluded their publication by an individual: but that it was extremely desirable that there should be some public record of the judicial opinion of the Judges. Section 1 enacted that a reporter might be appointed, "the same to be an officer of the Court and amenable thereto for the correct and faithful performance of his duty"; he was to submit on the first day of each Term a fair report of all decisions given by the Court, to the Judges who were to sign the reports in open Court—this was to be thenceforth an "authentic report of all such decisions." Section 6 placed the appointing power in the Governor or person administering the government.

In order to provide a salary, section 2 directed every attorney annually, on or before the first day of Michaelmas Term, to take out a certificate from the Clerk of the Crown and Pleas; this the Attorney could obtain as of right on producing to the Clerk the receipt of the Law Society for his fees, not less than two guineas (\$8.40), which the Law Society was to determine upon, and also paying the Clerk a fee of 2s. 6d. (50 cents). If there were any default in taking out the certificate in time the attorney had to pay four guineas (\$16.80) to the

Law Society. Practising without a certificate was punishable with a penalty of £10 (\$40) recoverable by information.

The Treasurer of the Law Society was to pay to the Receiver General all moneys so received by him and the Reporter was to be paid a salary of £100 (\$400) by the Receiver General: he was also allowed to sell Reports for his own benefit. At a meeting of Convocation in Easter Term, 4 Geo. IV., "it was resolved that the full sum of one guinea be paid by every attorney as a fee in and of the fund for payment of the salary of the Reporter to be appointed by the Lieutenant-Governor."

The first Reporter was Thomas Taylor,¹ and the first Report begins with Trinity Term, 4 Geo. IV., 1824: "Taylor's Reports" appeared in 1828: this was a small 8vo. volume, now very rare, the second edition published by Henry Rowsell, Toronto, in 1862, being that generally used.

The publication threatened not to be a financial success: in Michaelmas Term, 8 Geo. IV., November 17, 1827, we find that "Mr. Taylor, the Reporter of Cases argued in the King's Bench, moved Convocation on the subject of the Expense of printing those Reports, complaining that he sustained a loss in the Editing of them," but "after some discussion the Society postponed the further consideration of the subject."

Taylor had been a Bencher from Easter Term, 1 Geo. IV.: but he does not seem to have been successful in inducing his brother Benchers to give him financial assistance, for we hear nothing more of the matter. He published no Reports after those for Trinity Term, 8 Geo. IV., 1827; but he continued to be a Bencher—his last attendance as such seems to have been February 18, 1832, Hilary Term, 2 Wm. IV.

He was succeeded as Reporter by William Henry Draper,² who also published one volume, an octavo, printed by R. D. Chatterton, Cobourg, publisher of the "Cobourg Star" and afterwards Deputy Clerk of the

Crown and Pleas and Clerk of the County Court at Cobourg.³ This volume contains the decisions from Michaelmas Term, 10 Geo. IV., November 6, 1829, till Easter Term, 1 Wm. IV., April 30, 1831.

This could not have paid, either: we find, Hilary Term, 5 Geo. IV., February 5, 1835, Mr. Washburn⁴ giving notice "That he will on the next day of the meeting of the Convocation move that a petition be drawn up, adopted and presented from the Society to the Legislature, praying the repeal of the Law appointing a Reporter to the Court of King's Bench"—nothing further is heard of this motion.

The objection, of course, was not to the Reporter, but to the imposition of a tax upon the members of the profession in the lower branch, i.e., pretty much every lawyer in the Province. We find several complaints as to the way Mr. Charles Coxwell Small, Clerk of the Crown and Pleas, refused the Certificates because application was not made in time: and there can be no doubt that many a practitioner felt his annual tax to be a useless burden. Nothing, however, was done till 1837, when in Michaelmas Term, 1 Vic., August 19th, "on motion made and seconded it was ordered that the Treasurer (Robert Sympson Jameson, Vice-Chancellor) and Messrs. (George) Ridout and (Robert) Baldwin be a Committee to draft a Bill amending the Act of 4 Geo. IV., c. 3, entitled, 'An Act providing for the Publication of Reports of King's Bench,' to be reported next term together with any observations they may see fit to make." There was no report from this Committee in the following Term, nor so far as appears at any time: but in Easter Term, 3 Vic., February 8, 1840, in the Annual Report of the Committee of Economy, appears the statement that a Bill for altering the provision made for the appointment of a Reporter for the Court of Queen's Bench had been passed by the Houses of Parliament and should it "receive the Royal Assent during the present Term, the

Committee will probably feel it incumbent on them to bring the subject before the Convocation in a Special Report." The Royal Assent was duly given by Poulett Thomson (who became Lord Sydenham in August of the same year), the Governor General; and the Act came into force February 10, 1840.

Before referring to the provisions of that Statute, it should be mentioned that great inconvenience was experienced on Draper discontinuing his Reports. We find in Trinity Term, 2 & 3 Vic., June 18, 1839, a resolution passed in Convocation, "that it is expedient and proper that a copy of the Reports of cases decided in the Court of King's Bench should be placed in the Law Society Library and as the printed Reports do not extend beyond Easter Term, 1 Wm. IV., that His Honour the Treasurer be authorized to employ a person or persons to transcribe the said Reports from that period to the present time, and also from time to time hereafter upon the same being signed by the Judges and that the same after being duly compared and examined with the originals shall be placed in the said Library, and that the Treasurer be authorized to pay the person copying the same out of the Funds of the Society." (It will be remembered that Draper's Reports came down only through Easter Term, 1 Wm. IV.).

Accordingly a copy was ultimately procured of the Mss. of Taylor's Reports already spoken of, which is Vol. 1 of the Manuscript Reports in the Library, the other volumes being vol. 2, Trinity Term, 2 Wm. IV., to Easter Term, 2 Wm. IV.; vol. 3, Trinity Term, 2 & 3 Wm. IV. to Trinity Term, 3 & 4 Wm. IV.; vol. 4, Michaelmas Term, 4 Wm. IV. to Michaelmas Term, 5 Wm. IV.; vol. 5, Hilary Term, 5 Wm. IV. to Hilary Term, 6 Wm. IV.; vol. 6, Easter Term, 6 Wm. IV. to Hilary Term, 7 Wm. IV.

It would appear that Henry Sherwood was appointed Reporter by the Governor in 1837⁵ and that the disturbances arising from the Rebellion in the latter part of that

year put an end to all business—that he could not attend to the reporting during the greater part of 1838 and 1839 owing to his being officially employed in various parts of the Province. He was applied to by the Law Society for copies of the judgments pursuant to the resolution and he set his clerk, Mr. FitzGibbon, at the work. This was delayed somewhat by the circumstance that the written opinions of the Judges had been mislaid: but, August 10, 1840, Sherwood was confident that he would be able to lay the copies before the Law Society by the beginning of the following Term.

CHAPTER XX.

THE REPORTS—REPORTER APPOINTED BY THE LAW SOCIETY.

The Statute of 1840, 3 Vic., c. 2, as we have seen, came into force February 10, 1840: this, by sec. 1, gave the power to the Law Society to appoint a Barrister to the office of Reporter of the Court of Queen's Bench and provided that the Reporter should be responsible to the Society for the correct and faithful discharge of his duty—with a salary not to exceed £150 (\$600) per annum and removable at will. The salary was provided for as before: every attorney must take out a certificate annually (paying the Clerk of the Crown and Pleas a fee of a shilling, 20 cents) on production of a receipt from the Treasurer of the Law Society for such dues as the Benchers should fix. The Reporter was to report "Verbal decisions" of general importance, as well as those delivered in writing: and might publish Reports and Digest for his own profit—he had no discretion to refuse if required by the Law Society. The Attorney who should practise without a certificate was liable to a fine of £10 (\$40) and if he did not take it out before or during Michaelmas Term of each

year he was mulcted £4 (\$16), these sums to be paid to the Treasurer of the Law Society.

Henry Sherwood was not displaced on the passing of this Act: but he resigned, Hilary Term, 4 Vic., November 2, 1840, as his "other avocations are such as to prevent his attending to the duties as" he "ought." He had hoped to bring the Reports up to date, but owing to his notes and some papers being mislaid, he had not succeeded: he agreed, however, to use every exertion in conjunction with his successor to furnish a correct report of the cases which had been determined during his term of office. This does not appear to have been achieved: we have no reports of cases decided between Hilary Term, 7 Wm. IV. (1837) and Hilary Term, 4 Vic. (1840), a gap of three years.

At the meeting of November 7, 1840, Sherwood's resignation was accepted and John Hillyard Cameron⁶ appointed Reporter under the Statute subject to the approval and confirmation of the Judges. Cameron had already (November 3rd) begun to report, having been requested by Sherwood to serve as *locum tenens*: he continued to be Reporter until 1846, when he resigned, upon being appointed Solicitor General for Canada West.

By Easter Term, 4 Vic., February, 1841, two volumes of the back reports had been obtained and a third was well on the way: the cost already was £118 (\$472) and to complete the third volume would cost £40 (\$160) more. A copy of all the Reports was obtained by Easter Term, 5 Vic., February, 1842, the whole cost being £178 15s. (\$715).

In 1841 a Rule was passed for regulating the office of Reporter.

The following year, Michaelmas Term, 6 Vic., August 13th, 1842, the Secretary was instructed to enquire of the Executors of Thomas Taylor, whether they had in their possession any manuscript Report of cases subsequent to those published by him: this led to nothing. At

the same meeting the Treasurer (Robert Baldwin) was directed to enquire of Henry Sherwood as to reports of the cases decided during his term of office: this also came to naught.

By this time Cameron had finished the first volume of his Reports: and he asked Convocation to advance him £75 (\$300) toward publishing it—he represented that the cost of a volume of 500 pages would be about £250 (\$1,000) and that he had a subscription list of £125 (\$500); he said that if the Law Society would advance him £75 he would make up the residue, £50 (\$200) himself. He anticipated a sale of 100 copies at £2 (\$8) each: and if this hope were realized, he would repay the £75 advanced, leaving the amount to be advanced by himself to be made up by further sales, if any.

I do not find that this request was ever so much as considered by Convocation: at all events, it was not acceded to.

Cameron's first volume runs from Hilary Term, 4 Vic., November 3rd, 1840, to Michaelmas Term, 6 Vic., 1843. He began another volume, which, so far as completed, runs from Easter Term to Hilary Term, 1843: these two volumes are known as Cameron's Mss. Reports, vols. 1 & 2, respectively.

CHAPTER XXI.

THE REPORTS—“THE UPPER CANADA JURIST” AND CAMERON'S DIGEST AND RULES— COURT OF CHANCERY.

In February, 1844, Easter Term, 7 Vic., Cameron petitioned the Society, setting out that he was about to undertake the publication of the Reports of the Court of Queen's Bench in a monthly periodical to be called the “Canadian Jurist”: the cost was expected rather to exceed £300 a year, he had promises from

111 persons to become subscribers at £3 per annum, but he feared that he would not realize the full amount promised: he therefore asked for a grant not to exceed £75. In the letter he says that he had published a Digest of all the cases reported and of many not reported before he became Reporter, and since his appointment he had published an Annual Digest of all cases reported—on these his loss was (£165—£152=) £13. He had also published the new Rules of Court at a loss of nearly £50. Convocation ordered the sum of £75 to be paid him by way of indemnity *pro tanto* against loss; and also that six copies of “Cameron’s Rules of Court” should be purchased for the Library.

The first Digest referred to is “Cameron’s Digest” from Michaelmas Term, 10 Geo. IV., to Hilary Term, 3 Vic., an 8vo volume of 149 pages, published in 1840, Toronto, by Henry Rowsell, and printed at the Patriot Office. The Annual Digest for 1841 contains 24 pages: that for 1842, 24 pages: that for 1843, 27 pages—they were all published by H. & W. Rowsell, King Street, Toronto, and in 1841, 1843, and 1844 respectively. All these Digests, bound in one volume, are to be found in Osgoode Hall Library.

The volume containing the Rules of Court I have never seen: the Library copies have all been lost. In the Catalogue, however, it appears as a 12mo. volume published in Toronto, 1844, and as containing the Rules of Court and Statutes relating to the Practice and Pleading of the Court of Queen’s Bench.

There had so far been no provision made for reporting the decisions of the Court of Chancery, which came into existence in 1837. June 18, 1844, Trinity Term, 7 & 8 Vic., Convocation passed a resolution that in their opinion “It is expedient that provision should be made by Law for reporting the decisions of the Court of Chancery in this Province:” Mr. Spragge submitted a draft Bill for such purpose, which was approved by Convocation. This was not passed till the

following year, when it appears as 8 Vic., c. 39. This Statute provides for the appointment by the Law Society, with the approbation of the Vice-Chancellor, of a Barrister as Reporter of the Court of Chancery, who might be the same person as the Reporter of the Court of Queen's Bench: he was to report not only the judgments given in writing but also the "Verbal judgments" of general importance: these reports were to be submitted to the Vice-Chancellor and signed by him: and the Reporter might for his own profit publish the Reports or a Digest. His salary was to be fixed by the Law Society at not more than £100 (\$400): and the Law Society was authorized to fix an annual fee of not more than £1 5s. (\$5.00) to be paid by every Solicitor practising in the Court—if the Solicitor was also an Attorney, one fee could be fixed payable by such person. Every practising Solicitor must pay his fee to the Treasurer on or before August 20th of each year, and on or before that day take out his Certificate from the Registrar of the Court of Chancery paying the fee of 2s. 6d. (50 cents) therefor: if one failed to take out his Certificate at the proper time, he had to pay £4 (\$16) to the Treasurer, and if he practised without a certificate he was liable to a fine of £10 (\$40) which was to be paid into the hands of the Treasurer. This Act came into force, March 29th, 1845, and in June 17 following, Easter Term, 8 & 9 Vic., applications were received from Messrs. Grant, Harrison, Brough and Foster for the position. Mr. Mowat put in his application at the next meeting, June 19; and on that day Alexander Grant was appointed subject to the approval of the Vice-Chancellor. This was given by Vice-Chancellor Jameson the following day; and in the Michaelmas Term following, 9 Vic., November 15th, 1845, the Salary was fixed at £100.

"The Upper Canada Jurist," an 8vo., was published by H. & W. Rowsell, Toronto; the first volume consisted of two parts, the first part of 352 pages being

issued in 11 parts of 32 pages each, and the second 351 pages in the same number of parts. When collected they bore the title page "The Upper Canada Jurist Containing Original and Selected Articles on Legal Subjects, some Important Decisions in Bankruptcy and Chancery in Upper Canada and in the English Common Law Courts with an Alphabetical List of Cases and Index of Principal Matters, Vol. I—Part I, 1844-5 (or Vol. I—Part II, 1845-6), Toronto, H. & W. Rowsell, 1845 (or 1846)."

The title page fairly sets out the contents—there are original articles on Imprisonment for Debt, Law of Primogeniture, &c., all strongly against any change from the old ways, reports of cases in our Court of Chancery (the first in January, 1839), &c.

Concurrently with this was published the first volume of the Queen's Bench and Practice Court Reports by John Hillyard Cameron, Toronto, H. & W. Rowsell 1845. This contains the cases Easter Term, 7 Vic., to Easter Term, 8 Vic., inclusive.

In Trinity Term, 7 & 8 Vic., June 10, 1844, Cameron being in ill health and obliged to cross the Atlantic, had written the Society that he had engaged James Lukin (afterwards Sir Lukin) Robinson to report the cases and publish the Jurist according to the Prospectus and asked his appointment *pro tempore*: this request was granted.

In 1846 Cameron was appointed Solicitor General for Canada West and resigned his position as Reporter July 27, Trinity Term, 10 Vic.: James Lukin Robinson was appointed to succeed him August 8 of the same year, and Rules were framed for his guidance.

The second volume of the Upper Canada Jurist begins the publication of the Reports from the end of Draper's Reports—from Trinity Term, 1 & 2 Wm. IV. to Trinity Term, 2 & 3 Wm. IV. It also contains reports of certain Bankruptcy and Executive Council cases: it was published by Henry Rowsell, Toronto, 1846-8: the third

volume of the Jurist has the back reports of cases from Trinity Term, 1 & 2 Wm. IV., to Hilary Term, 2 Wm. IV., with some Bankruptcy cases.

Thereafter we hear no more of the Upper Canada Jurist, but the next volume of old reports is styled "Queen's Bench and Practice Reports (Old Series), vol. III." This was published in 1850 by J. Lukin Robinson, Esq., although it contains cases in the time of King William only, i.e., from Michaelmas Term, 3 Wm. IV., to Michaelmas Term, 5 Wm. IV. Volume 4 followed in 1851 with reports to 6 Wm. IV.; volume 5 in 1855 to Easter Term, 2 Vic., and volume 6 in 1858, bringing the Reports down to Hilary Term, 7 Vic., the last volume being under the editorship of Christopher Robinson. This completed the report of cases from the end of Draper's Reports to 1 U.C.R., edited by Cameron.

CHAPTER XXII.

THE REPORTS—THE SERIES U.C.R., U.C.C.P., Gr., C.L.Ch., P.R., Ch.Ch.R., C.L.J. (O.S.).

In the meantime in Easter Term, 12 & 13 Vic., June 19, 1849, a Rule had been passed for the guidance of the Chancery Reporter similar to that laying down the duties of the Queen's Bench Reporter: this directed him to attend every day, make full reports, lay them before the Society, &c., &c., and fixed his salary at £150 (\$600). The new Rule was passed, no doubt, in view of the reorganization of the Court of Chancery by 12 Vic., v. 64. We find the first volume of Grant's Chancery Reports issued in 1850 and beginning with the cases in the new Court on November 2, 1849. The series continued, 29 in all, until the Judicature Act of 1881.

In the Queen's Bench, Cameron edited two volumes when he was succeeded (as we have seen) by Lukin Robinson: Lukin Robinson nominally edited vols. 3-13, but

most of the work was done by his younger brother Christopher, who on the resignation of Lukin Robinson, November 29, 1856, was appointed in his brother's place. Christopher Robinson continued to be Reporter until 1873 (32 U.C.R.), when he was made Editor of the Common Law Reports and succeeded as Reporter by H. C. W. Wethey. Mr. Wethey reported 33 to 42 U.C.R., 1879, when he was succeeded by Salter J. VanKoughnet, who continued in office during the remainder of the period covered by the U.C. Reports.

The Court of Common Pleas being erected in 1849 by 12 Vic., c. 63, it became necessary to appoint a Reporter for that Court: and Edward C. Jones was appointed September 5, 1850. He entered at once upon the duties of his office and reported the decisions of the Court of Common Pleas until 1864 (U.C.C.P., vol. 1-14), when he was succeeded by Salter J. VanKoughnet, who continued to be Reporter until 1873 (U.C.C.P., vols. 15-21), when he was succeeded by George Frederick Harman, Christopher Robinson being thereafter Editor. Mr. Harman was the Reporter in the remaining volumes of this series (U.C.C.P., vols. 22-32).

Certain of the cases in Appeal are to be found in Grant's Chancery Reports, but it was not till 1865 that a systematic collection was made of them. Mr. Grant published three volumes of Error and Appeal Cases, bringing the Reports down to 1866.

Common Law Practice received some attention in addition to the cases in the U.C.R. series. Lukin Robinson in 1851 and 1853 published two 12mo. volumes (C.L. Ch., vols. 1 and 2). In 1856 appeared vol. 1 of the series known as Practice Reports, under the editorship of Lukin Robinson: Vol. 2 appeared in 1860 under the name of his better known brother, Christopher, who also edited vol. 3. Henry O'Brien edited vols. 4, 5 and 6; J. Stewart Tupper reported vol. 7; W. E. Perdue and T. T. Rolph, vol. 8, and T. T. Rolph alone the rest of the series from vol. 9 to vol. 19 inclusive. Christopher Robinson was

editor of vol. 7-11 inclusive and James F. Smith for those following vol. 11.

Chancery Chambers Reports did not begin till 1868, when Alexander Grant published vol. 1, Ch.Ch.R.; C. W. Cooper, a well known Equity Barrister, continued the series into vols. 2, 3 and 4, the last appearing in 1873: thereafter the Chancery Chambers are reported in the Practice Series.

I have gone quite beyond the date 1857 for the purpose of completing the story of the earlier Reports: I do not say anything of the "Appeal Reports," which series began only in 1876.

Returning, we find that February 16, 1855, Hilary Term, 18 Vic., was laid before Convocation a letter dated February 5, 1855, from James Patton, Barrister, of Barrie, setting out that, with others, he had commenced a monthly Law periodical by the name of the "Law Journal" which it was hoped would be a valuable medium for conveying to the profession official notices of Convocation: he asks for "recognition of the value and utility of the work." June 16th, 1855, Easter Term, 18 Vic., it was ordered that "all notices for or in behalf of this Society and usually inserted in the official Gazette, be also sent for insertion as advertisements in the Law Journal at present published by James Patton, Esquire, at Barrie."

This "Law Journal" is "The Upper Canada Law Journal and Local Courts Gazette" (U.C.L.J., O.S.): it began publication in January 1855 and ceased with the number for December, 1864. The first volume was edited by Mr. Patton and Hewitt Bernard (afterwards Chief Clerk of the Crown Lands Department), and was printed at the office of the "Barrie Herald" (Dunlop Street, Barrie), a newspaper founded and for some years edited by Patton. Vol. 2 (1856) was printed at the same office and edited by W. D. Ardagh (afterwards Judge of the County Court at Barrie), while the third (1857) was edited by Mr. Ardagh and Robert

A. Harrison and the place of printing removed to Toronto (Maclean, Thomas & Co., 17 & 19 King Street East). The following volumes ending with 10 U.C.L.J., O.S., were all edited by the same gentlemen, vols. 4, 5 and 6 being printed by Maclean & Co., and the remainder by W. C. Chewett & Co., their successors at the same place (the title of the last six volumes is "The Upper Canada Law Journal and Municipal and Local Courts Gazette").

This series contains many reports of cases English and Upper Canadian, Notices of the Law Society, and many articles of great interest.

The Law Reporters' Act of 1854 was in substance a consolidation of the previous legislation and calls for no special notice.

NOTES TO PART V.

¹The first volume of Reports is entitled "Reports of Cases Argued and Determined in the Court of King's Bench in York, Upper Canada, Commencing in Trinity Term in the fourth year of the Reign of George IV. and ending in Trinity Term in the eighth year of George IV. By Thomas Taylor Esq., of the Middle Temple, Barrister-at-Law. Volume 1. *Tamen in pretio est* York U.C. Printed by John Carey, King Street."

A Manuscript of this volume is in Osgoode Hall Library endorsed "Reports, Temp. Campbell." It cannot be the original manuscript as it has in error "Queen's Bench" instead of "King's Bench" on the first page.

This volume was published after the complaint of financial loss mentioned in the text, the Preface being dated May 1, 1828: it was probably due to the financial loss on this publication that no further volumes were published by Taylor.

²William Henry Draper, afterwards Chief Justice and a C.B. A reasonably full biography of Chief Justice Draper is to be found in Read's "Lives of the Judges," pp. 222 sqq.

I should like to add a statement concerning Draper once made to me by the late Chief Justice Armour, who knew him well—he said that Draper, when a law student residing in Port Hope, walked to Cobourg (where he was employed in the Registry office)

and back every week day. This was before the Grand Trunk Railway was built, and anyone who knows the heavy clay roads of the neighborhood will appreciate the walk of seven miles twice a day.'

³R. D. Chatterton was in the early 80's still Clerk of the County Court, &c., at Cobourg—he had a mechanical turn and invented many car-couplers, &c., but without much pecuniary success.

⁴Washburn—this was Simon Washburn already mentioned more than once.

⁵Henry Sherwood (a son of the Judge, Levius Peters Sherwood), who became Solicitor General in 1842 and Attorney General in 1847: he was the ninth Mayor of Toronto, 1842-43-44.

⁶John Hillyard Cameron, long Treasurer of the Law Society and one of the most eminent practitioners the Province has ever seen. There is a portrait of him in the Benchers' Luncheon-Room of Osgoode Hall. Born of Scottish ancestors at Beaucaire, Languedoc, France, in 1817: his father's Regiment coming to Canada, he was educated at Upper Canada College: studied law under Henry John Boulton and John Godfrey Spragge (afterwards C.J.O.): served in the Rebellion as Captain: called and admitted 1838, and entered into partnership with Mr. Spragge in Toronto: became a very distinguished and successful Nisi Prius Counsel: appointed Q.C. in 1846 when he joined Draper's Administration as Solicitor General for Canada West: remained in Parliament till 1857: and again entered in 1861—a strong and consistent Conservative. A prominent Orangeman, he became Grand Master in 1859 and continued such till his death in 1876. Becoming a Bencher ex-officio in 1846, he continued to be a Bencher till his death: he was Treasurer from 1859 till his death.

PART VI.

THE PORTRAITS.

THE PORTRAITS

CHAPTER XXIII.

PORTRAITS.

The first mention of a portrait is June 20, 1846, Easter Term, 9 & 10 Vic.; on that day there was laid before Convocation by the Treasurer, Vice-Chancellor Jameson, a letter (dated June 17th) to him from Alexander Grant saying that a number of members of the Bar had requested the Chief Justice "to allow Mr. Berthon¹ to paint a full length [sic] portrait of his Lordship in his robes for the purpose of being presented to the Law Society to be placed in Osgoode Hall" and that his Lordship having consented, the portrait was now ready: the Society was asked to accept it. There is no record of what was done on this communication: but no doubt the portrait was thankfully accepted—it still graces the west wall of the Library over the fire place.

On February 13th, 1849, Hilary Term, 12 Vic., it was resolved by Convocation that application should be made to the family of the late Dr. Baldwin with a view to obtaining a portrait of him. Mr. James Edward Small, the Treasurer, accordingly wrote Robert Baldwin, then Attorney General West, enclosing a copy of the Resolution and adding an expression of the high gratification it afforded him "personally at being made the organ of communication of so just a tribute of respect for the memory of one of the oldest and most respected members of the Profession and who might with much truth be styled the father of the Society in Upper Canada." Mr. Baldwin, then in

Montreal attending to his duties as Member of Parliament and Attorney General West, wrote March 10th gladly assenting to the proposal. The choice of artist being left to Mr. Baldwin, he selected a Canadian artist, Mr. Hamel,² who indeed had never seen Dr. Baldwin, to copy an existing portrait: the copy was "considered by all those of the family who had seen it as a better likeness than the original portrait from which it was taken." Mr. Hamel obtained leave to have a lithographic plate from the copy he had made: and the painting was received by the Society in June, 1850. The likeness was considered by all a striking one: and as Mr. Spragge, the Treasurer, wrote Mr. Robert Baldwin, June 4th, there were "expressions of respect and esteem which were called forth from the Benchers present by the sight of the well-remembered features of their long honored Treasurer whom we had regarded not only as Treasurer of the Law Society but in some sort as a Father of the Profession of which we were most of us Junior Members." The following week, June 11th, Mr. Hamel, through Attorney General Baldwin, gave to the Society (to the Treasurer and Benchers of which he had dedicated it) one of the plates which "had been struck under the permission given him by the Society." This particular lithographed copy does not seem to be extant: but copies are not very rare. The portrait hangs on the east wall of Convocation Room at Osgoode Hall.

NOTES TO PART VI.

¹George Theodore Berthon was a son of René Theodore Berthon, and was born in Vienna in the year 1806. The father was a pupil of David, and was well-known as a distinguished artist.

George Theodore, his son, showed at a very early age great aptitude for portrait painting, and after his school days were over, visited the various Capitals of Europe to perfect himself in his art.

About 1840 he went to England and married Zélie Boisseau, by whom he had one daughter. Mrs. Berthon died in 1847, and

he subsequently married Clare, daughter of Mr. Delahay, who was for many years French Master at Upper Canada College.

In 1844 Mr. Berthon settled in Toronto, and devoted himself to portrait painting and pastel work. Of the portraits at Osgoode Hall, Mr. Berthon always considered that of Chief Justice Robinson as his masterpiece.

He painted many of the Judges, whose portraits are now hanging in Osgoode Hall; and amongst others, in addition to these, may be mentioned the portraits painted by him of Hon. G. W. Allan, Colonel Denison, Colonel E. W. Thompson, Principals McCaul, Barron and Stennett, which are considered both good likenesses and works of art.

It may be added that portraits of several of the Lieutenant-Governors of Ontario and of some ex-Speakers of the Senate that hang in the Senate Lobbies are by this artist. The last work on which he was engaged, it is understood, was a portrait of Chief Justice Taylor of Winnipeg.

A portrait by him was sent to Philadelphia in 1876 by the Ontario Government, and took the Centennial Gold Medal. He died in 1892.

²Theophile Hamel was born 1814 and died 1870. He lived in the Province of Quebec, studied under Antoine Plamondon and improved his skill materially by a visit to Europe. He is remembered chiefly for his portraits and church pictures: he painted a large number of religious subjects for the interior of various churches in his Province—these are much admired both for their technique and their devotional value.

SUPPLEMENTARY NOTE.

It has long been the custom upon the appointment of a Chief Justice or a Chancellor for the Law Society to order a portrait of the newly appointed, to be hung in Osgoode Hall. In addition to these, the Law Society has had painted the portraits of its Treasurers for some time. Moreover, the Law Society has by gift or otherwise acquired the portraits of certain previous Chief Justices and also those of Judges more recent.

The following is a list of the existing portraits:—

CHIEF JUSTICES AND CHANCELLORS.

Sir James Buchanan Macaulay.

C. J. C. P., 1849.

William Hume Blake.

Chancellor 1849.

William Henry Draper, C.B.

C. J. C. P. 1856.

Phillip M. M. S. VanKoughnet.....Berthon, 1864
Chancellor 1862.

Archibald MacLeanBerthon, 1863
C. J. U. C. 1862.

William Buell RichardsBerthon, 1864
C. J. C. P. 1864.

Sir John Hawkins Hagarty.....Berthon, 1869
C. J. C. P. 1868.

Robert Alexander HarrisonBerthon, 1876
C. J. U. C. 1875.

Thomas MossBerthon, 1878
C. J. O. 1877.

Sir Adam Wilson.....Berthon, 1879
C. J. C. P. 1878.

Sir John Alexander Boyd.....Berthon, 1882
Chancellor 1881.

Sir Mathew Crooks Cameron.....Berthon, 1884
C. J. C. P. 1884.

Sir Thomas Galt.
C. J. C. P. 1887.

John Douglas Armour.....G. T. Berthon, 1888
C. J. Q. B. 1887.

Sir William Ralph Meredith.....E. Wyly Grier*
C. J. C. P. 1894.

Sir George William Burton.....Dickson Patterson†
C. J. O. 1897.

Sir Glenholme Falconbridge.....E. Wyly Grier
C. J. Q. B. 1900.

Sir Charles Moss.....J. W. L. Forster‡
C. J. O. 1902.

Sir William Mulock.....E. Wyly Grier
C. J. Ex. 1905.

Richard Martin Meredith.....E. Wyly Grier
C. J. C. P. 1914.

*E. Wyly Grier, the well-known Toronto painter.

†Son of Mr. Justice Patterson of the Court of Appeal for Ontario and the Supreme Court of Canada, formerly of Toronto, now of New York.

‡Also of Toronto.

OTHER JUDGES.

- Featherstone Osler.....Sir James Guthrie*
 J. C. P. 1879; J. A. 1883.
- John Wilson.....(Presented by Edward Bayly, Esq., K.C.)
 J. C. P. 1863.

FORMER CHIEF JUSTICES.

- William Osgoode.
 C. J. U. C. 1792.
- John Elmsley.
 C. J. U. C. 1796.
- William Dummer Powell.
 C. J. U. C. 1816.
- Sir William Campbell.
 C. J. U. C. 1825.

Also a group painting of Macaulay, C.J.; Draper, C.J.; Robinson, C.J.; McLean, C.J., and (Jonas) Jones, J., K.B.

TREASURERS.

- William Warren BaldwinHamel
- Robert BaldwinBerthon
- John Hillyard CameronBerthon
 (also another by an unnamed artist).
- Stephen RichardsPatterson
- Edward BlakeBerthon (1882)
- Sir Aemilius Irving.....E. Wyly Grier (1894)
- George Fergusson Shepley.....E. Wyly Grier

*President of the Royal Scottish Academy.

PART VII.

THE LAW SOCIETY OF UPPER CAN-
ADA, ITS CONSTITUTION AND
GOVERNMENT.

THE LAW SOCIETY OF UPPER CANADA, ITS CONSTITUTION AND GOVERNMENT

CHAPTER XXIV.

“THE LAW SOCIETY OF UPPER CANADA” —ITS CONSTITUTION.

The Law Society of Upper Canada was at first not a Corporation: the Statute of 1797, by section 1, simply authorized those at the time “admitted in the Law and practising at the Bar” in the Province to form themselves into a “Society.”

There is no express provision for any other persons becoming Members of the Society: but the power to admit others than the existing practitioners was considered to be and, of course, was given by implication by sec. 5. This provides that “no person other than the present Practitioners * * * * shall be permitted to practise at the Bar of any of His Majesty’s Courts in this Province, unless such person shall have been previously entered of and admitted into the said Society as a Student of the Laws * * * * and shall have been duly called and admitted to the Practice of the Law as a Barrister, according to the constitutions and establishment thereof.”

This legislation was considered to make “all persons duly entered of the Society and admitted on its books, whether as Students or Barristers-at-Law * * * * by such entry and admission to all intents and purposes whatsoever, Members of the Society.”¹ This still is the case, although Students have never been

allowed to take any part in its proceedings in any way.

When the Act of 1822 was passed and a Corporation was formed, the question arose as to the constitution of the Society. The Act, (1822) 2 Geo. IV., c. 5, recites in the Preamble that "it is expedient to repeal part and amend" the Law Society's Act of 1797, and proceeds to enact "that the Treasurer and Benchers of the Law Society for the time being and their Successors to be nominated and appointed according to the Rules and By-Laws of the Law Society, shall be and they are hereby declared to be one body corporate and politic in deed and in law by the name of the Law Society of Upper Canada and shall have perpetual succession and a common Seal * * * *."

The only express repeal contained in this Act was as to certain qualifications to practise and as regards Attorneys.

The question of the effect of this Act received considerable attention in Convocation and at length a Committee was appointed to deal with the matter. The Committee reported *inter alia* "that while this * * * * Act of Parliament confers corporate powers upon the Treasurer and Benchers only under the Corporate name of The Law Society of Upper Canada, it does not interfere with the right of membership of persons duly entered of the Society and admitted on its Books as Students or Barristers-at-Law but leaves them Members of The Law Society of Upper Canada, though not Members of The Corporation of the Law Society of Upper Canada."²

No subsequent legislation has affected this position and it is undoubtedly sound. We have to this day The Law Society of Upper Canada of which all persons entered on its books as Barrister or Student are Members, and a Corporation of the same name composed of the Treasurer and Benchers only, R.S.O. 1914, ch. 157, sec. 3. The Student has no rights, as such Member, to take part in its proceedings nor has the Barrister: we shall

see in the next Chapter that a Barrister has certain rights of voting; these, however, are not based upon his Membership of the Society but upon his status as "a Member of the Bar."

CHAPTER XXV.

THE LAW SOCIETY OF UPPER CANADA —ITS GOVERNMENT.

The original Law Society's Act by sec. 2 authorized and directed "the Society" to "form a body of rules and regulations for its own government under the inspection of the Judges of the Province * * * and to appoint the six senior Members or more of the present Practitioners and the six senior Members or more for the time being in all times to come (whereof His Majesty's Attorney General and Solicitor General for the time being shall be and be considered to be two) as Governors or Benchers of the Law Society, and also to appoint a Librarian and a Treasurer."

It must not be forgotten that it was the Society and not the Governors or Benchers who were charged with the duty of forming the body of Rules and Regulations.

When the ten practitioners met at Newark, July 17th, 1797, and organized the Society under the Act, they appointed the Six Benchers and directed that the "Benchers according to Seniority take upon themselves the Treasurership of the Law Society, annually" but formed no other Rule or Regulation as to the government of the Society.

The six Benchers so appointed were John White (the Attorney General), Robert I. D. Gray (the Solicitor General), Walter Roe, Angus Macdonel (Macdonell), James Clark and Christopher Robinson: and John White became Treasurer.

It was soon seen that there would be difficulty in calling together "the Society": and in Trinity Term, 39 Geo. III., July 13th, 1799, a circular letter was sent to all the Members of the Society for a General Meeting to be holden on the first day of the next Michaelmas Term "to take into consideration the state of the * * * Society and to make further Rules and Regulations for its future welfare." This was sent by the Treasurer, Gray, to every member of the Society (except himself), viz., John White, Angus Macdonel (Macdonell), Jas. Clarke (Clark), Timothy Thomson (Thompson), Nicholas Hagerman (Hagerman), Allan McLean, Walter Roe, W. D. Powell, Junr., Alex'r Stuart (Stewart), B. C. Beardsley, William Weeks (Weekes), Jacob Farrand, Saml. Sherwood, John McKay—Christopher Robinson had died the same year.

On the day fixed, November 4th, 1799, only five members turned up, the Attorney and Solicitor General, and Messrs. Macdonell, Powell and Weekes: the meeting was adjourned till November 7th, when only seven attended, the Attorney and Solicitor General, and Messrs. Macdonell, Clarke, Powell, Stewart and Weekes: it was again adjourned till the 9th, when the same seven were present. Certain Rules were proposed by the Solicitor General Gray which were agreed to (it is set out in the Minute Book that they were approved by Clark and Powell "as they were about to depart tomorrow for Newark").

January 13th, 1800, Michaelmas Term, 40 Geo. III., saw the next meeting: but that, too, was poorly attended, only the Solicitor General, Gray, and Messrs. Macdonell, Powell and Weekes being present: at the adjourned meeting on Thursday, January 16th, 1800, the same four being present, the several Rules approved, Nov. 9th, 1799, were again read and approved. Amongst them was Rule No. 5: "That the Benchers for the time being be considered as Governors of the Law Society and that any Five of them be a quorum and have full

power to make such rules and regulations from time to time as shall be necessary for the welfare of the Law Society subject nevertheless to the inspection of the Judges.”

To avoid any imputation of favouritism or grasping at power, another rule was passed at the same time, No. 4, appointing all the Members of the Society, Benchers. These rules were submitted to the Judges, Elmsley, C.J., Powell and Alcock, JJ., January 16th, 1800, and approved, thereby becoming valid so far as the Society and the Judges could make them so.

The legality of the Rule No. 5 is much more than doubtful; the Statute having imposed upon the Society the duty of making rules and regulations, the Society could not delegate that power to the Benchers: but the practice after the approval by the Judges of this Rule was uniform—the Society as such was never consulted or even called together, but all the business of the Society was transacted by the Benchers. While “Convocation” properly implies the meeting of all graduates, the word has in this Society for more than a century been confined to the Benchers.

The legal difficulty did not escape the keen lawyers in 1822—the Committee already mentioned reported “that by an Act of the Parliament of this Province of 2nd Geo. 4th, Chap. 5, the Rule (No. 5) above mentioned and the proceedings of the Benchers under it were recognized and followed up by a legislative enactment incorporating that portion of the Society in which the power of legislating for the whole body had been so vested”—this was adopted by Convocation. Resolutions of Convocation, Trinity Term, 1 & 2 Wm. IV., No. 6.

There is nothing whatever in the Act validating or recognizing the acts of the Benchers; this resolution goes much beyond the fact, and were it a matter of any moment, the validity of the Rules and Regulations made by the Benchers before 1822 might be questioned.

There is no Rule or By-law for the nomination and appointment of Benchers: the power of appointment is by the Act of 1797 vested in the Society, but after the Rules of 1799, a uniform practice prevailed of proposing in Convocation a member of the Bar as a Bencher, which proposal being adopted, the Treasurer was directed to communicate the resolution to the party, whose appointment was then considered complete. The Barrister so appointed Bencher was frequently not one of the six senior members of the Society, and not even, in every instance, next in seniority to the Benchers already appointed.

This practice was certainly recognized by the Legislature in the Act of 1822: it enacts "that the Treasurer and Benchers of The Law Society for the time being and their successors to be nominated and appointed according to the Rules and By-laws of the said Society, shall be a body corporate, &c., &c." Of the Benchers at that time about fifteen in number, only two, viz., Allan McLean and Bartholomew Crannell Beardsley, had been appointed by the Society—all the rest by the Benchers³: and the Legislature must be taken to have ratified the method of appointing the others.

No Rule for the appointment of Benchers was necessary after the Act and none was, in fact, passed for some years. In Trinity Term, 1 & 2 Wm. IV., (1831), a Committee appointed to deal with the Revision of the By-laws of the Society recommended a Rule which was adopted July 2nd, 1831, approved November 19th, 1831, No. 7, which provided that "all persons to be elected Benchers * * * in future shall be elected as heretofore by the majority of votes of the Benchers for the time being or of such of them as shall be present at the time of such Election," provided that "notice of intention to make such a proposal shall have been given in open Convocation during the Term next preceding" such proposal and provided also that His Majesty's Attorney and Solicitor General for the time being and the six Senior

Barristers for the time being in all times to come, shall be *ipso facto* without any Election Benchers of this Society.’’

This was the state of the law when the Act of 1857 was passed—and it was in substance continued by the Rules of 1859—the subsequent legislation will be found referred to in the Supplementary Note to this Part.

THE TREASURER.

From the beginning the “Treasurer” did not simply care for the funds of the Society; he was also the Head of the Society, President and Chairman—this was an adoption of the terminology of the English Inns of Court.⁴

By the first Rule passed July 17th, 1797, it was provided that “the Benchers according to seniority take upon themselves the Treasurership of the Society annually”—and this Rule was approved by the Judges in January, 1800. The Rule was not very rigidly observed—John White was Treasurer, 1797; Gray, 1798, 1799 and 1800-1; Angus Macdonell, 1801, 1802, 1803, 1804; Thomas Scott, 1805; D’Arcy Boulton, 1806 to 1811; William Warren Baldwin, 1811 to 1815; D’Arcy Boulton, again 1816, 1817; John Beverley Robinson, 1818, and Henry John Boulton, 1819.

Rule No. 14, Trinity Term, 59 Geo. III., July, 1819, provides “that the Treasurer be chosen annually in Michaelmas Term by the majority of Votes of the Benchers then present and that the present Treasurer do continue in office until Michaelmas Term next.”

This Rule remained in force till November, 1831, when the time was changed to Hilary Term instead of Michaelmas Term.

In the Rules of 1859, the time is again made Michaelmas Term, but on the first Saturday in that Term, annually.

The Treasurer, although he was a Chairman, was also a real Treasurer, and looked after the funds of the Society, invested them, &c., &c. Dr. Baldwin in Michaelmas Term, 5 Geo. IV., 1824, being elected Treasurer, opened an account with himself as such Treasurer and this account was carefully kept till 1831 in the Minute Book No. 1. No earlier Journal Statement seems to be extant: but many entries are to be found of the passing of the Treasurer's accounts, &c.

From and after 1840 a Sub-Treasurer (who was for a long time also Librarian and Secretary) took most of the routine financial work off the Treasurer's hands.

MEETINGS.

By Rule No. 6 of July 17th, 1797, it was "Resolved that the second Monday of every Term be a day of General Meeting of the Benchers" and in 1808, January 11th, by Rule No. 12, three were made a quorum. The Rule No. 15 passed Trinity Term, 69 Geo. III., made the first Tuesday of every Term "a day of general meeting of the Benchers."

Rule 3 of Trinity Term, 1 & 2 Wm. IV., November 19th, 1831, fixed the first Monday, the first Saturday, the second Tuesday and the last Saturday, of every Term as Standing Convocation days, with power to the Treasurer to call a special meeting on any day in Term on giving notice to all the Benchers then in Town—these standing days were continued by the Rules of 1859—and there was no power to sit except in Term until the Rules consolidated in 1875 came into force.

NOTES TO PART VII.

¹I follow the wording of the Second Resolution of Convocation, Trinity Term, 1 & 2 Wm. IV.—this will be found on p. 17 of “The Rules of The Law Society of Upper Canada,” &c. &c., published by and for the Law Society at York U.C. in Hilary Term 1833. It is rather a rare book—I have seen only a very few copies.

²This is the Seventh Resolution of Convocation, Trinity Term, 1 & 2 Wm. IV., to be found on p. 18 of the publication above named.

The genesis of this and other Resolutions is as follows: On July 3rd, 1830, on motion of Robert Baldwin, seconded by Dr. Rolph, a Committee was appointed to take into consideration the existing By-Laws and the alteration that it might be expedient to make therein, &c.—this Committee consisted of Dr. Baldwin, the Treasurer George Ridout, W. H. Draper, Robert Baldwin, James E. Small and Henry John Boulton the Attorney General—Robert Baldwin was apparently by far the most active member.

They were directed to lay the result of their enquiries and suggested alterations before Convocation on the first day of the next Michaelmas Term: on that day they got farther time: and again all Hilary Term: again on the first day of Easter Term a further extension. At length on the first day of Trinity Term, 1 & 2 Wm. IV., July 1st, 1831, they laid a Report before Convocation containing the Resolutions (by implication)—this Report is to be found in the work already cited, pp. 59, 60. Resolutions were drawn up based upon this Report and passed—i.e., pp. 17-19.

³A list made by Dr. Baldwin, Treasurer, February, 1826 (in Minute Book No. 1 of the Law Society) gives the following as Benchers at that date (I have added the date of their appointment):

1. John Beverley Robinson, Attorney General	1815
2. Henry John Boulton, Solicitor General	1818
3. James Wood	1818
4. Bartholomew Crannell Beardsley	1799
5. William Dickson, Senior	1806
6. William Warren Baldwin	1807
7. Christopher Alexander Hagerman	1820
8. D'Arey Boulton, Junior	1818
9. John Powell (he never was a Bencher)	
10. George Ridout	1820
11. Thomas Ward	1820
12. Jonas Jones	1820
13. Thomas Taylor	1820

14. Archibald McLean	1820
15. (James Buchanan Macaulay)	1825
16. (John Rolph)	1824

*See for example Herbert's *Antiquities of the Inns of Court and Chancery*, 1804, p. 228. "The officer of Treasurer is of considerable importance * * * He is, the Supreme Officer of the whole Society and has the regulation of its concerns. He admits gentlemen into the Society, etc."

The fact that the Attorney General John White was an English Barrister, probably accounts for the language adopted.

SUPPLEMENTARY NOTE ON THE GOVERNMENT OF THE LAW SOCIETY SINCE 1857.

THE BENCHERS.

The self-perpetuating system which had been in force from the beginning was put an end to in 1871 by the Ontario Act, 34 Vic. c. 15, which instituted a bench of thirty Benchers to be elected by ballot by all the Barristers on the Roll, and also of ex-officio Benchers, the Attorney General of the Province and all ex-Attorneys General and ex-Solicitors General (there is now no Solicitor General of the Province), and all retired Judges of the Superior Courts; the elected members hold office for five years, when there is a new election.

A natural effect of this was that the older and better known Barristers were elected term after term, and there was little chance of a young man obtaining the position of Bencher. To avoid this, it was in 1910 enacted by 10 Edw. VII., c. 76 (Ont.) that all those who had been elected at four quinquennial elections should be ex-officio Benchers, thus leaving the field open for the younger men. (It had a few years before by (1900) 63 Vic. c. 20, s. 1, been provided that every one who had for seven consecutive years held the office of Treasurer of the Society should be an ex-officio Bencher.)

THE TREASURER.

The Statute of 1871, which made Benchers elective, fixed the date for election of Treasurer; the first term after the election of the new Bench and in Easter Term of each year. This is still the rule.

PART VIII.

THE ROLLS.



THE ROLLS

CHAPTER XXVI.

THE ROLLS.

The Law Society's Rolls must be carefully distinguished from the Rolls of the Courts—these last will be first dealt with.

The first Roll of Practitioners in the Courts was required by the Act of 1794, 34 Geo. III., c. 4, which authorized the Governor to grant a licence to not more than sixteen British subjects to act as Advocates and Attorneys. Section 2 provides that "their names shall be inscribed on a Roll for that purpose to be provided and to be kept among the Records of the Court of King's Bench." This Roll was provided and forms the first skin of the "Rolls of Attornies" of the King's Bench. It is still extant and in good order—the names thereon are as follows:—

(I follow the original spelling, etc. The names at the left were there written by David Burn, Clerk of the Crown, who also added the dates. The numbers seem to have been added later. The names at the right are in the handwriting of the Attorneys).

(OATHS AND CHARGE TO ADVOCATE AND ATTORNEY)

Date of Licence.

David Burn,

Clk. of the Crown.

D. W. Smith	July 7, 1794	1. D. W. Smith
Richard Barnes Tickell	July 7, 1794	1a. Richard Barnes Tickell
Angus McDonell	July 7, 1794	2. Angus McDonell
		R.C. 14th Geo. 3.
James Clark	July 9, 1794	3. James Clark
Allan McLean	July 9, 1794	4. Allan McLean
Timothy Thompson	July 20, 1794	5. Timothy Thompson
Robt. I. D. Gray	Oct. 22, 1794	6. Robt. I. D. Gray
Jacob Farrand	Oct. 26, 1794	7. J. Farrand
Nicholas Hagerman	Oct. 26, 1794	8. Nicholas Hagerman
W. D. Powell, junior	Nov. 3, 1795	9. W. D. Powell, Junior
Alex'r Stewart	Nov. 6, 1795	10. Alex. Stewart
Davenport Phelps		
Charles J. Peters	Admitted 4th June, 1796.	11. Charles J. Peters
W. Birdseye Peters	Licence 26th May, 1796.	12. William Birdseye Peters
Samuel Sherwood	Licence 26th May, 1796.	13. Samuel Sherwood
Admitted 10th April, 1798		14. B. Crannell Beardsley
Admitted 17th January, 1801		15. William Weekes
Admitted 18th April, 1801		16. Jno. Ten Broeck
Admitted 22nd January, 1803.		17. Walter B. Wilkinson
		18. Leviús P. Sherwood
		19. D'Arcy Boulton

Davenport Phelps did not sign the Roll and therefore he was not in strictness "authorized to receive fees for practising in any of His Majesty's Courts within this Province," under the provisions of Section 2 of the Act.

Down to and including No. 14, Bartholomew Crannell Beardsley, the names are of those receiving a licence under the Act of 1794—the remaining names are of persons who were members of the Law Society—William Weekes being the first student to be called by the Law Society.

All these whose names are on this skin were called "to the degree of Advocate and Attorney": and all were required to take the oath against Transubstantiation, except Roman Catholics. The note after the name of Angus McDonell indicates that he did not take that oath, but the modified oath prescribed by the Imperial Act, 14 Geo. III., c. 33, s. 7.

In the Second Skin the oath against Transubstantiation is still contained, but the title or degree of "Advocate" disappears—the oath continues to appear till the Sixth Skin is reached, May 1st, 1833, when it vanishes forever. The King's Bench Roll is continuous till the present time.

The Court of Common Pleas when instituted in 1849 had its own Roll of Attorneys, which continued until the abolition of that Court in 1881 by the Ontario Judicature Act.

A Barristers' Roll in the King's Bench was first provided in Easter Term, 1803: and was signed by all but one of those who received a licence under the Act of that year, 43 Geo. III., c. 3: all Barristers called after that Act by the Law Society also signed it.

The Court of Chancery had also its Roll—of Solicitors of course: it calls for no special mention.

The Law Society has two Rolls—the Common Roll, i.e., the Roll of Members, and the Barristers' Roll. These

are not, like the Rolls of the Courts, signed by the persons named; they were first provided in 1832.

In Michaelmas Term, 2 Wm. IV., November 11, 1831, on motion of Robert Baldwin (pursuant to notice given the previous Term) seconded by George Boulton, a select Committee was appointed "to examine the Journals and Books of the Society and prepare a correct list of the Members of the Society from the time of its institution, arranged according to the order of their presidency (sic) on the Books of the Society, and that the said Committee do consist of Mr. Treasurer (George Ridout) and Mr. R. Baldwin." The Committee reported in Easter Term, 2 Wm. IV., May 4th, 1832, with lists: (1) the Common Roll of all Members admitted on the Books from 1797 to Hilary Term, 2 Wm. IV., 1832. (2) the Roll of Barristers, (3) the Roll of Benchers, (4) the Roll of Treasurers, (5) a List of Chief Justices of the King's Bench, (6) a List of the Puisne Justices, (7) a List of Attornies-General, (8) a List of Solicitors-General, and (9) a List of Advocates in Upper Canada who did not become Members of the Society. The Report comments on the inaccurate manner in which the Books of the Society were kept in earlier times, and adds that other sources of information had to be sought "principally the Rolls of the Court of King's Bench, and in some instances as to explanatory matters the recollection of the Elder Branches of the Society and other early inhabitants of the Province."

The lists were published in the Rules, &c., of 1833, and also appear in the Minute Books of the Society.

Rolls were engrossed on parchment and a paper copy made and thereafter the names of gentlemen becoming members of the Society, whether Students or Barristers, were added from time to time.

PART IX.

BIOGRAPHICAL NOTES.

BIOGRAPHICAL NOTES

CHAPTER XXVII.

JOHN WHITE, THE FIRST ATTORNEY GENERAL.

The ten practitioners who met at Wilson's Hotel, Newark, July 17, 1797, to organize the Law Society of Upper Canada, were: John White, A.G.; Robert I. D. Gray, S.G.; Angus McDonell; James Clark; Christopher Robinson; Allan McLean; William D. Powell; Alexander Stewart; Nicholas Hagerman, and B. C. Beardsley.

John White, the Attorney General, was an English Barrister (who seems to have been admitted at Gray's Inn, 1780) who came out to Upper Canada with Chief Justice Osgoode, the first Chief Justice of Upper Canada, having been appointed to the position of Attorney General of the Province of Upper Canada by the Home Government. He arrived at Kingston¹ June 30th, 1792, and conducted for the Crown the criminal cases at the Court of Oyer and Terminer in August of that year. He was, through the influence of Simcoe, elected as the Member of the first House of Assembly for the Riding of Leeds and Frontenac, but was not a member of the second House. He left Kingston in September, 1792, and thereafter was resident at the capital, Newark (or Niagara) and afterwards York, and seems to have been a diligent and capable officer. He had a large practice in the Courts² and, when a member of the House of Assembly, was active and useful.³ In January, 1800, he came to his death in a duel. He had made some statements derogatory to the character of a lady in

the official class; the angry husband, Major John Small, Clerk of the Executive Council, demanded an explanation, and that offered not proving satisfactory, he challenged White and shot him (January 3, 1800) in a duel in a grove back of the Government Buildings on Palace (now Front) Street, at the foot of what is now Berkeley Street, Toronto. White was buried in his garden in the rear of his own lot, near Bloor Street, east of Sherbourne Street. In 1871 his bones were disturbed by labourers digging sand for building purposes. Under the pious care of Mr. Clarke Gamble, Q.C., they were reverently taken up and re-interred in St. James' Cemetery. Small was tried at York January 20th, 1800, on a charge of murder before Mr. Justice Allcock and a jury, and was acquitted. The foreman of the jury was William Jarvis, whose son was to figure, seventeen years later, as a principal—a successful principal—in an equally celebrated duel, when he shot and killed young John Ridout, July 12, 1817.⁴

Attorney General White seems to have got into a quarrel before this: in Trinity Term, 39 Geo. III., 13th July, 1799, the Court of King's Bench, composed of Chief Justice Elmsley and Justices Powell and Allcock made an order "that William Fitzgerald, Esquire, Captain in His Majesty's Regiment of Queen's Rangers, do show cause on the first day of Michaelmas Term next, why an information should not be filed against him for writing and sending two letters, dated respectively the 12th and 13th of this instant July, signed William Fitzgerald and addressed to John White, Esquire, and it is further ordered that the said William Fitzgerald do immediately enter into a recognizance before a Judge of this Court, with two sufficient sureties, himself in the sum of one thousand pounds Provincial Currency, and each of the said sureties in five hundred pounds of the same Currency, conditioned to keep the peace towards the said John White, Esquire, and all other His Majesty's subjects for the space of twelve months from the date hereof. And it is further ordered that the Sheriff

of the Home District do forthwith serve the said William Fitzgerald with this order.”

This was the time-honoured method of preventing a duel. In this instance it seems to have been effectual, as on the first day of Michaelmas Term, 4th November, 1799, the Solicitor General moved for and obtained a discharge of the Rule.

The last case before the full Court in which White appeared was *Barrie v. Clark*, November 15th, 1799. The next time his name appears in the Term Book is July 16th, 1800, when Mr. Hagerman was admitted as Attorney on the record in *Myers v. Cronk*, “in the room of John White, Esquire, deceased.”

White's name appears first on the Barristers' Roll of the Society, as having received the degree of Barrister-at-Law in Trinity Term, 1797. He was also the first Treasurer, being succeeded in 1798 by the gentleman next to be named.

White made the first motion ever made in the House of Commons for Upper Canada, September 18, 1792, and was on all the important Committees during the first Parliament.⁵

He never became an Attorney or “Advocate,” but was entitled to practise and did practise as such, his membership of the English Bar being itself a qualification under the Ordinance of 1785. He never signed the King's Bench Roll of either Advocates, Attorneys or Barristers; he is No. 1 on the Common Roll, as well as on the Barristers' Roll of the Law Society and also No. 1 on the List of Benchers, and on that of Treasurers.

CHAPTER XXVIII.

ROBERT ISAAC DEY GRAY, THE FIRST
SOLICITOR GENERAL.

Robert Isaac Dey Gray was the son of a Major in the British service, and received much of his education in Quebec: he studied law with Jacob Farrand, to be mentioned later. He was elected member of the second House of Assembly, 1796-1800, for the riding of Stormont; he was appointed Solicitor General in March, 1797: he was also elected for the same constituency in 1804 for the third Parliament, but never took his seat, as his death occurred before the House was called together. He was Registrar of the Surrogate Court of the Eastern District from 1793 till 1800, and for a time Judge in the Home District. In 1804 he went with Mr. Justice Cochran, Angus Macdonell—who it will be remembered was also one of the ten who had met at Newark to organize the Society and who was also a member of the House of Assembly—the High Constable of York, the witnesses, the Indian interpreters, Cowan and Ruggles, and an Indian, Ogetonicut, charged with the murder at Washburn Island, in Scugog Lake, of John Sharpe. A white man, Cosens, had killed a brother of the Indian's and he, finding Sharpe alone in the Farewell Brothers' fur-trading camp, had killed him in revenge for his brother's death. Captured on Toronto Island (then a peninsula) he was ordered to be sent for trial to Newcastle (now Presqu'Isle) in the Newcastle District, in which District the murder had been committed.

The Solicitor General had arranged with Mr. Weekes, a brother Barrister, that they would go together from York to Newcastle on horseback; but the former yielded to the request of the Judge that he would accompany him on the Government schooner "Speedy." The schooner was not too seaworthy; a storm sprang up, and after being seen off what is now Lakeport, she was lost

to sight—ship, passengers and crew. It is said that a hen coop from the schooner came ashore, but even that is doubtful: the total number of lost was nineteen or twenty. This shocking tragedy occurred October 7, 1804.

On the first day of the next term the Court of King's Bench ordered that all matters "except such as are merely of course do stand over without prejudice to the several parties concerned, the late disastrous loss of the 'Speedy' on her voyage to Newcastle with Judge Cochran and suite having occasioned this vacancy of the Bench."

Some of Gray's acts while member of Parliament may be mentioned. On March 1, 1803, he petitioned Parliament to pass a law making valid and effectual four "Fines," which he with Chief Justice Elmsley and William Cooper had been concerned in passing in the Court of King's Bench, but which he had been advised were not effectual by reason of the want of proper officers. The petition was favourably received and a Bill passed the House: it was concurred in by the Legislative Council, but the Governor withheld his Assent and the matter dropped. The Governor counted for something in those days: he had the right under Sec. 30 of the Act 31 Geo. III., c. 31, (1) to assent to a Bill in His Majesty's name, (2) to withhold His Majesty's consent, or (3) to reserve the Bill for the Signification of His Majesty's pleasure thereon. The archaic and complicated system of conveyancing known as "Fines" is now, of course, wholly unknown.

It has frequently been said that Gray took an active part in the abolition of slavery in Upper Canada: he did act to prevent the measure which in effect provided for the abolition of slavery being so amended as seriously to be impaired in its usefulness. The Bill (see Note 5) prohibiting the importation of slaves had been passed in 1793, before Gray was a member of the House: in June, 1798, Christopher Robinson (another of the ten lawyers at the first meeting of the Law Society), who was the member for Addington and

Ontario,⁶ moved, seconded by Edward Jessup, another United Empire Loyalist and the member for Grenville, for leave to bring in a Bill to enable persons "immigrating to this Province to bring their negro slaves in with them"—leave was given, the Bill introduced, and after a vigorous opposition from Gray and a few others, passed June 20 on a division of 8 to 4: it went up to the Legislative Council and promptly received the three months' hoist. As has been said, Gray generally receives credit for taking part in passing the Bill of 1793, which practically put an end to slavery in Upper Canada; but while this is an error, (as he was not then Solicitor General or a member of Parliament) what he did in 1798 sufficiently shows his hatred of slavery: and probably the fate of the last mentioned Bill, strongly supported as it was in the Commons, deterred other attempts to emasculate the Slavery Act of 1793.

It is interesting to note that Gray left certain property to a coloured slave body servant of his, John Baker, who, after taking part as a British soldier in the Battle of Waterloo, survived till 1871, the last of all who had been slaves in Upper Canada or the old Province of Quebec.

Gray was made a Barrister-at-Law in the Trinity Term, 1797, with White and thirteen others: his name is second on the Common and Barristers' Rolls of the Law Society: he is No. 6 on the King's Bench Roll of Attorneys, but (of course) does not appear on the King's Bench Roll of Barristers. He was Bencher (No. 2 on the List) from 1797 till his death, and Treasurer (No. 2 on the List) for the years 1798, 1799, 1800, and 1801, being succeeded by Angus Macdonell, now to be mentioned.

CHAPTER XXIX.

ANGUS MACDONELL.

Angus Macdonell (the name is variously spelled—on the Attorneys' Roll he signs his name "McDonell") was of the well-known Glengarry family of that name. His father was Captain Allan Macdonell of Highland birth and descent, and his mother was the sister of the Laird of MacNab, and so aunt of "The MacNab," who was chief of the MacNab settlement in Renfrew County, Upper Canada—a gentleman universally known in the Province and recognized as one of its "characters." Captain Macdonell came with his wife and family to the colony of New York in 1773, at the instance of Sir William Johnson. He settled in Tryon County in the Mohawk Valley, and remained loyal during the Revolution. He became an officer in the loyal Colonial Troops and was closely associated with Sir John Johnson: he was much in his confidence and was sent by him with letters to the Royalist Governor, Tryon. When the rebellion became successful, he came with his clan to Glengarry; and they were ever foremost in the defence of their new country.

The Angus Macdonell of whom we are now speaking, son of Captain Allan Macdonell, was Clerk of the first and second Houses of Assembly; he was dismissed in June, 1801, and was succeeded by Donald McLean: Macdonell was thanked by the House for his services and the opinion of the House was expressed on a division of 13 to 4 "that he was not dismissed from his office for any irregularity in his conduct as Clerk."

Mr. Justice Allcock of the King's Bench was elected at the General Election in July, 1800, as Member of the House for Durham, Simcoe and the East Riding of York: his election was petitioned against and declared invalid: and thereupon a new writ issued and at the ensuing election Macdonell successfully contested the seat against

Mr. John Small. He took his seat for the first time July 4, 1801, and was a very prominent and active member. He seems to have been the first member to urge that the name "Toronto" should be restored to this district: his petition presented February 16, 1804, represented that the former name of Toronto was more familiar and agreeable to the inhabitants of the Town, Township and County of York, and he asked for and obtained leave to bring in a bill to change the name for the Town, Township and County from York to Toronto. No bill was in fact brought in and the matter seems to have been lost sight of—his death in the same year was probably the cause. The official name York given to the Town in 1794 was never cordially accepted by the inhabitants, who preferred the name Toronto.⁷ From the first to the last day of his term, Macdonell urged the advisability of encouraging the growth of hemp to supply the navy with cordage: hemp-culture was a very common subject of legislation and a more common subject of public and private discussion, but it never proved a real success in this Province.

At the general election in 1804 he defeated William Weekes, who succeeded him as member for that constituency; David William Smith was a third candidate.

Macdonell had a very active practice (as appears from the Term Books); he moved the last Rule granted by the Court in the Term preceding his death: in the following term there are instances of other practitioners being admitted Attorney in his stead. It is not without interest to note that he made the very first motion ever made in the Court of King's Bench for the Province. On October 11, 1794, he obtained leave to file a declaration, although the affidavit was not returned with the writ. He, on the same day, filed a motion paper for a Rule to set aside an award of arbitrators. The third and only other motion for this term was made by Mr. James Clark, who obtained a Rule to show cause why a writ of enquiry should not be executed.

No notice is taken in the Law Society records of the shocking disaster of the loss of the "Speedy," her crew and passengers—perhaps because the first meeting thereafter did not take place till March, 1806. On February 4, 1805, the Speaker informed the House that he had sent notice to the Lieutenant-Governor that the seat for Stormont and Glengarry and that for Durham, Simcoe and the East Riding of York, were vacated. These were the seats of Solicitor General Gray and of Macdonell.

Macdonell is No. 4 on the Common and Barristers' Roll of the Law Society, No. 2 on the King's Bench Roll of Attornies: he was a Bencher (No. 4 on the List) from 1797 till his death, and Treasurer from 1801.

He is sometimes confused with his elder brother Alexander, also a Member of the Assembly, who was the first Sheriff of the Home District, and who became Manager of Lord Selkirk's Settlement at Baldoon, near Lake St. Clair.

CHAPTER XXX.

JAMES CLARK.

James Clark came from the Mecklenburg (Kingston) part of the Province, where he had been appointed one of the Judges of the Court of Common Pleas: he did not sit in that Court after July 8th, 1789. Removing to Newark, he (1793) became Clerk of the Legislative Council^s; July 10th, 1794, he received a licence to practise as an Attorney and Advocate under 34 Geo. III., c. 4, and had a large practice, at least in the Court of King's Bench. He made the third motion on the first day on which the Court transacted business, October 11, 1794, and appeared very frequently for some years. His last motion, so far as appears from the Term Book, was July 9th, 1802—the number of his appear-

ances having grown somewhat less for some years. He got into trouble with a client, one Lane, for whom he had collected money which he omitted to pay over. Lane made an affidavit, which the Court, July 4, 1803, called upon Clark to answer; his answer was unsatisfactory; an attachment issued July 15, "to lay (sic) in the hands of the Sheriff of the District of Niagara unexecuted until the last day of the ensuing Assizes." Probably he paid up, as we hear nothing further of the matter, and he was not suspended from practice or struck off the Rolls. He was No. 5 on both the Law Society's Rolls, and a Benchet from 1797 till his death; his last attendance at a meeting was in February 18, 1807. He is No. 3 on the Roll of Attorneys of the King's Bench.⁹

CHAPTER XXXI.

CHRISTOPHER ROBINSON.

Christopher Robinson was a scion of the Virginia family of that name, the first of whom in America was also called Christopher and came to this continent as private secretary to Sir William Berkeley, Governor of Virginia. The subject of this chapter was his great-grandson; having been educated in William and Mary College, he joined the British Army; and after the Revolution (in 1784) emigrated to New Brunswick, being the only one of his family who did not take the Continental side. He came, after four years, to Lower Canada, and in 1792, on the formation of the new Province, to Upper Canada, residing in Kingston till 1798. He was called to the Bar and practised his profession there; in 1798 he removed to York (Toronto), but died in three weeks after his arrival at that place.

He was a member of the second House of Commons, having been elected for Addington and Ontario.⁶ He took an active part in Legislation during the short

time he was a member of the House. He was reported to the House as sick in his room June 3, 1798: but was in his place by June 12: his activity in the attempt to allow immigrants to bring their negro slaves into Upper Canada has been already noted: no doubt as a Virginian and accustomed to slavery from infancy, he saw no great harm in it—or perhaps the Bill was intended as an immigration measure, as the Province certainly was grievously in need of good settlers, who would be welcomed on any honourable terms. Moreover, in the existing necessity for and scarcity of working men, the mind naturally turned to forced labour: and Britons had not yet that instinctive horror of slavery which now characterizes them.

He died November 2, 1798, and on the opening day of the succeeding session, June 22, the Speaker informed the House that he had issued a writ for the election of a Knight of the Shire for the County of Addington in his place.

Robinson did not appear very frequently in the Court of King's Bench in Term: May 1, 1795, one motion; July 17, 1797, eight; and November, 1797, two, seem to be all. In Trinity Term, 39 Geo. III., July 1, 1799, in a number of cases, another is admitted as Attorney on the Record "in the room of Robinson, deceased," and in one case, Easter Term, 40 Geo. III., 10th April, 1800, "in the place of Christopher Robinson, Esq., deceased." The first meeting was his only attendance at the Law Society; he was then residing in Kingston, and passage from that town to Niagara or York was difficult and dangerous.

He left a family, several of whom took a prominent part in Provincial life, particularly Sir John Beverley Robinson, Bart., the first native Canadian Chief Justice of the Province. Some of his descendants are still on the Roll of the Law Society and are no discredit to their distinguished ancestor. He is No. 6 on both Rolls and was one of the first Benchers. His name is not on the King's Bench Roll of Attorneys.

CHAPTER XXXII.

ALLAN McLEAN.

Allan McLean is No. 7 on the Law Society's Rolls. He was a Bencher in 1799; attended meetings in 1803, 1806, 1807, 1808, 1809, 1810, 1815. He appeared in the Court of King's Bench in Term for the first time during Hilary Term, 1795, the second term the Court sat, and thereafter he was a very active practitioner indeed.

He was, in 1804, elected to the House of Assembly for the constituency of Frontenac; he attended every session of that Parliament; was re-elected to the fifth Parliament (1809), attended all the sessions, was re-elected to the sixth Parliament (1812), and chosen as Speaker of the House. Re-elected to the seventh Parliament (1816), and again chosen Speaker; he was re-elected (1820) to the eighth Parliament, but failed to be again Speaker, Levius Peters Sherwood being chosen in his stead. He attended throughout the session of 1821, which is the last of which the proceedings have so far been printed. (He is not to be confused with Archibald McLean, member for Stormont, who became a Justice of the King's Bench in 1837; Justice of the Common Pleas in 1850; of the Queen's Bench in 1856, and Chief Justice in that Court in 1862, dying in 1865.)

One incident of his Parliamentary career may be mentioned: the "John Mills Jackson incident." Jackson was an Englishman of some means, who having inherited some land in Lower Canada and bought some in Upper Canada, came out to view his property. He settled here for a time and was struck with the many abuses in the Departments of the Government; on his return to England, he in 1809 published in London a pamphlet entitled "A View of the Political Situation of the Province of Upper Canada," in which he exposed many abuses and gross wrongs. It does not seem to have had a large circulation here—Jackson did not send any copies out, and a few years afterwards Gourlay was un-

able to find any trace of a copy in Upper Canada—it is very rare, although a copy turns up now and then in the second-hand booksellers' shops. The pamphlet concluded with a call to the King, Lords and Commons to look into the distribution of the Crown Lands, the remonstrances of the Six Nation Indians, &c. Some one sent out a copy to this Province: McLean, March 9, 1810, moved that it be read in the House: the next day the House expressed "its abhorrence and detestation of" this "infamous and seditious libel" and McLean was appointed on the Committee to draw up an address to the Lieutenant-Governor Gore accordingly. He acted as Chairman of the Committee and drew up an address that did not lack in vigour, condemnatory of "the most gross and false aspersions on 'His Excellency,' &c.," which appeared on "almost every page" of the pamphlet which so much moved the House's "abhorrence and indignation." On a vote of 12 to 4, the address passed and met the approbation of even the exigent and hard-to-please Gore. "The greater the truth, the greater the libel," was a well known maxim.

McLean was also more than once one of the Commissioners to settle the financial matters between the two Provinces of Upper and Lower Canada.

Much of the goods imported into the Province came by way of the St. Lawrence, and consequently through the Province of Lower Canada. A duty was imposed on most imported goods by Lower Canada: and an arrangement was entered into through Commissioners appointed by the Governors (the Upper Canada Act is 1793, 33 Geo. III., c. 9), whereby (speaking generally) Upper Canada refrained from imposing duties upon goods coming through Lower Canada and the two Provinces divided the income from the Lower Canadian duties. A new arrangement was made by Commissioners appointed under the Act of 1796, 36 Geo. III., c. 6, and that of 1797, 37 Geo. III., c. 12. An Inspector appointed and paid by the Provinces jointly was stationed at Coteau du Lac to keep track of the imports—the arrangement

to begin March 1, 1797, and to run for four years. It was slightly but not substantially modified February 11th, 1799, and ratified in that year by the Legislature 39 Geo. III., c. 5.

Lieutenant-Governor Peter Hunter, in his message to Parliament May 28, 1801, speaks of Commissioners to be appointed by him "under the authority of an Act of last Session," but no account is to be found of such an Act in the Journals of the Legislature and no copy of it is in existence. The Commissioners themselves claimed to have been appointed under the Act of 1796, but that Act expired in 1798, August 1st, and was not extended—the appointment seems to have been made under the Act of 1797, 37 Geo. III., c. 12, which was perpetual.

Timothy Thompson (whom we shall meet again) was one of the Commissioners; the Hon. Richard Cartwright of Kingston (grandfather of the late Sir Richard J. Cartwright, the late James S. Cartwright, M.C., and John R. Cartwright, Deputy Attorney General), was the other; the result of their labours is to be seen in the validating Act (1801), 41 Geo. III., c. 4, which also states the appointment of the Commissioners to have been under the Act of 1796: each Commissioner was paid £100 (\$400) for his services, July, 1801. The arrangement was to last till March 1, 1805.

To complete the story so far as it concerns the persons now under consideration—in 1804 a new commission was issued by Lieutenant-Governor Hunter, appointing Samuel Sherwood (whom we shall meet again) along with Cartwright and another Legislative Councillor, Hon. Robert Hamilton: July, 1804, they met the Commissioners from Lower Canada and continued the arrangement till March 1, 1809; this was confirmed, 45 Geo. III., c. 4, and each Commissioner paid £100: the arrangement was continued in 1809 by 49 Geo. III., c. 4: in 1811 by 51 Geo. III., c. 5: in 1813 by 53 Geo. III., c. 8: in 1814 by 54 Geo. III., c. 18: in 1816 by 56 Geo. III., c. 29: and finally repealed in 1818

by 58 Geo. III., c. 13. But a Commission of whom Samuel Sherwood and Allan McLean were two, made a new arrangement May 31, 1817, for the time from January 1, 1817, till July 1, 1819. On this arrangement expiring there arose considerable contention between the Provinces, Lower Canada keeping all the customs duties. A new Commission appointed failed to agree: the Lieutenant-Governor, Sir Peregrine Maitland, drew the attention of Parliament to the facts March 30, 1821, the whole matter was considered by a Committee and an address presented to the Governor. An attempt was made to have the matter dealt with by the Home authorities, a commission appointed under the authority of 2 Geo. IV., c. 19, was sent home for that purpose, but the dispute was never satisfactorily settled, even on the Union in 1841-42. Commissioners sat from time to time to settle the proportion to be received by each Province: at the time of Lord Durham's Report, Upper Canada received only two-fifths.

CHAPTER XXXIII.

WILLIAM DUMMER POWELL, JUNIOR.

The William D. Powell who was one of the ten lawyers who attended this first meeting has usually been supposed to be the Honourable William Dummer Powell, afterwards Chief Justice of the Province; but he was in reality the second son of the Chief Justice and with the same names. The elder William Dummer Powell was born in 1755, in Boston, and, taking with his father the Loyalist side, was under arms at the siege of Boston. He went to England with Gage when he was relieved of his command, and studied law in the Middle Temple, entering January 24, 1776. Afterwards he practised law in Montreal, and was when residing there, but

on a visit to England, called to the Bar of the Middle Temple, February 6th, 1784. He was in 1788 appointed First Judge (with the powers of three Judges) of the Court of Common Pleas in the District of Hesse: the Court sat at L'Assomption (Sandwich), but the Judge resided in Detroit. In 1794, on the organization of the Court of King's Bench for the Province, he became the first puisne Justice of that Court, and in 1815 was appointed Chief Justice; resigning in 1825, he died in 1834.

William Dummer Powell, Junior, was born in England in 1778. On his way to Montreal with his mother to join the father and husband, they were captured by an American privateer and taken to Boston. No harm was done the prisoners; they were released and got safely to Montreal. They accompanied the elder Powell in 1788 in his journey to Detroit, and apparently it was at Detroit that the younger Powell received his legal education. His name does not occur again in the records of the Law Society except as attending meetings, November 9, 1799, and January 13, 1800. He is No. 8 on the Law Society's Rolls and No. 9 on the King's Bench Roll of Attorneys—he was a Bencher (No. 10) from 1799 till his death.

He made no great name at the Bar. His name occurs from time to time in the Term Books, and finally, November 10, 1803, Mr. Macdonell is admitted Attorney in a certain case, "in the place of William Dummer Powell, deceased"—his father, with Allcock, C.J. and Cochran, J., constituting the Court.

His runaway marriage was one of the many romances of the early days of Upper Canada. He left two children, one of whom married Sheriff William Botsford Jarvis of Toronto, the other William C. Gwynne.

William Dummer Powell, Junior, had he lived longer—he died at 25 at Thorold, where he lies buried—might have been as well known as his brothers John, Alderman Powell, the "Saviour of Toronto," who in 1837

made known to the sleeping city the approach of the rebels, and Dr. Grant Powell, the army surgeon during the war of 1812. It may be noted that his father, the Judge, drew the articles of capitulation when the Americans took York in 1813.

CHAPTER XXXIV.

ALEXANDER STEWART, NICHOLAS HAGERMAN, BARTHOLOMEW CRANNELL BEARDSLEY.

Alexander Stewart, No. 9 on the Law Society's Rolls, No. 10 on the King's Bench Roll of Attorneys, had a very active practice in the Court of King's Bench, his first appearance in Term being April 10, 1796. He attended the meetings of the Law Society very regularly from 1801 till 1809, the last meeting attended by him being Michaelmas Term, 50 George III. An affidavit by him is filed in the King's Bench, November 8, 1819, and his name does not afterwards appear in the Term Books. His last appearance in Court as counsel was January 2, 1809, acting for John Silverthorn, who had been charged with an assault. He became a Bencher first in 1799, and is No. 11 on the List.

Nicholas Hagerman (sometimes spelled with two g's), No. 10 on the Law Society's Rolls, No. 8 on the Attorneys' Roll, was an American of Dutch descent, a United Empire Loyalist, who came to this country after the American Revolution with Major Van Alstine, the "Fighting Quaker." Hagerman (as the name was soon consistently spelled) is believed to have studied law in his native State, New York, before emigrating to Canada: he took up land in Adolphustown. His son, Christopher Alexander Hagerman, who was made a Justice of the King's Bench, is better known than his father; the son took part in many of the most acrimonious political

squabbles of his time, and was as well hated by the Radicals and loved by the Tories as any man of his time. Father and son were advocates against each other many times. The anecdote is told—*se non è vero, è ben trovato*—that on one such occasion at Kingston the son was successful, much to the elder man's annoyance. The father exclaimed, "Have I raised a son to put out my eyes?" to which the answer was returned, "No; to open them, father."

Although made a Bencher in 1799, the elder Hagerman did not attend another meeting of the Society till 1808, when he proposed his son, Christopher Alexander, who was articled to himself, to be entered on the books as a Student-at-Law. He attended once in 1811 and not afterwards: I have not noticed his name in the Term Books.

Bartholomew Crannell Beardsley's name appears very seldom in Term Books or Law Society's proceedings. He is No. 11 on the Law Society's Rolls, No. 14 on the King's Bench Roll of Attorneys, and became a Bencher in 1799.

CHAPTER XXXV.

WALTER ROE.

In addition to these ten there were five other practitioners created Barristers at the first meeting—Walter Roe, Timothy Thompson, Jacob Farrand, Samuel Sherwood and John McKay.

Walter Roe, No. 3 on the Law Society's Rolls, not on the King's Bench Rolls, was the son of a resident of London, England, a man of some means. His father died, and, his mother marrying again, Walter became dissatisfied with his home and went to sea. After following the sea for some years, he attracted the attention

of his Captain by his intelligence and ability. When the ship reached Montreal, the Captain persuaded Roe to enter a law office: he did so, and was admitted to practise law in 1789, April 13th, under the provisions of the Ordinance of 1785—I have his commission before me as I write. He must have left Montreal at once, for we find him in active practice in the District of Hesse that same summer. He appeared in the Court of Common Pleas in and for the District of Hesse the first day it sat, July 17, 1789, and was the only professional man who practised in that Court during the five years of its existence (so far as appears by the extant records); he appeared, indeed, in practically every case of importance.

Trained in the French-Canadian law and in the practice prescribed by the Quebec Ordinances of 1777, &c., he was at a disadvantage, when in 1792, the Legislature of Upper Canada introduced the English law and in 1794 destroyed the Courts of Common Pleas, instituting the Court of King's Bench in their place. His name does not appear as Counsel in the Term Books, although several motions are made by Counsel as his agent; once too his name occurs as witness.

He was a considerable landholder in the Western District, his name appearing in many chains of title. It was he, it is said, who delivered to the Americans the keys of the Fort at Detroit on the surrender of that place by the British in 1796 under the terms of "Jay's Treaty" of 1794. He was made Registrar for the Western District by Governor Simcoe in 1796, the Commission being still extant in the possession of his grandson, Albert E. Roe, Toronto.

Although a Bencher from 1797, No. 3 on the List, he never attended any meetings of the Law Society.

It may be noted that it was a son of his, William Roe, who was the Government clerk who saved much of the public money of the Province from the Americans on their capture of York (Toronto) in 1813, by burying it

on the farm of John Beverley Robinson, east of the Don Bridge, on the Kingston Road.

William Roe afterwards became a prominent merchant at Newmarket. The family tradition is that he was a juror on the trial of Lount and Matthews, March 26, 1838, for their part in the Mackenzie Rebellion. That would appear to be a mistake, as these unfortunate men pleaded Guilty. The trial referred to was probably that of Dr. James Hunter of Whitby, who was tried the same day his two friends were executed, April 12, 1838. On this jury was Mr. Gooderham—the original Gooderham, grandfather of the present generation. I have it from one who remembered those days, Sir Aemilius Irving, that when the jury retired to their room, Mr. Gooderham said: "Gentlemen, we have had enough hanging," and drawing his cloak about him, added, "When you are agreed on a verdict of Not Guilty, call me. I am going to have a sleep." He then lay down. A verdict of Not Guilty was arrived at with no great delay.

CHAPTER XXXVI.

TIMOTHY THOMPSON.

Timothy Thompson was a United Empire Loyalist who had been an Ensign in the King's Royal Regiment of New York. He came to the Bay of Quinte District at South Fredericksburg, and settled on a farm near Conway. It does not appear when he studied law (if he did) or when he began practice: he was undoubtedly a man of much consequence in his neighbourhood. He became a Bencher in 1799, but did not attend meetings, nor did he take part as Counsel in Term in the King's Bench.

Elected a member of the second House of Commons, for Lennox, Addington and Hastings in 1796, he took no part in the proceedings of 1798 (the records for 1796 and 1797 are lost); he was one of the five members reported against as absent June 17, 1799, and took his

place June 19, perhaps because of the business shortly to come on.

On June 20, Thomas Ward presented a petition to be relieved from the stringent provisions of the Law Society Act; and Solicitor General Gray and Thompson were appointed to take the petition into consideration and to report. On June 22 they did report, very strongly against the petition, and advised that Ward should be referred to the Law Society—the Report was adopted. It is satisfactory to know that Ward applied regularly to the Law Society and was admitted (No. 32) on the Books of the Society—he became a Barrister in Hilary Term, 1808 (No. 33), a Bencher in 1820 (No. 29) and had a very long career in the Newcastle District. Before becoming a Barrister, Ward was admitted to practise as an Attorney. No regular or other entry of his admission on the Books of the Law Society was made at the time; but April 6th, 1803, the Society noticed that though he had been admitted as Attorney, no entry had been made of his admission to the Law Society: accordingly while he was acknowledged as an Attorney he had to wait five years more for his Call.

After having got started, Thompson was a very active legislator so long as he remained a member of the House. He was re-elected for the third Parliament in 1800, but in 1805 was replaced by Thomas Dorland, and disappeared from public life. As late as 1820 he was a representative to the Grand Lodge, A. F. & A. M., from his Lodge, No. 7, the first Masonic Lodge in the Midland district.

Some of his actions while member may be referred to. Timothy Thompson, with two other members, was, June 11, 1798, rebuked by the House for not having attended duty in Parliament: they were threatened with a fine if they did “not attend their duty more religiously” in future. He was made Chairman of the Committee on the invasion of the Rights and Privileges of the House in the amusing Burns episode.

An enquiry was being made through a Committee of the House into the fees which those connected with the administration of justice as lawyers or officers were in the habit of receiving: the Committee directed (with others, amongst whom was William Weekes), David Burns, who was Clerk of the Crown as well as Master in Chancery of the Legislative Council, to attend. All the others did so, but Burns contented himself with sending a list of the fees he was in the habit of receiving as Clerk of the Peace: and declined to attend in person. On this being reported to the House, the Sergeant-at-Arms was ordered to take Burns into custody, and the Speaker issued his warrant accordingly. Burns promised that he would surrender himself, but when the time came he went to the Legislative Council: the Sergeant-at-Arms went to get him, was called into the Council Chamber by the Usher of the Black Rod and received a severe rebuke from the Chief Justice, who was Speaker of the Council. He reported to the House, who determined, on Angus Macdonell's motion, to do no business till they had vindicated the rights and privileges of the House. A warrant was issued by the Speaker of the House, and Burns was brought under it to the Bar of the House: he said that he intended no disrespect, but that he could not as a servant of the Crown answer any questions without the consent of His Majesty's Representative: he refused to express contrition and was ordered from the Bar of the House, but to remain in custody of the Special Messenger. He was shortly afterwards released and the matter patched up. This was one of the first attempts by the Commons to control the expenditure of public money: Burns was acting under instructions from the Government of the day, who contended that such matters were their business and not that of the people.

We have seen that Thompson acted as Commissioner in fixing the proportion each Province was to receive of the Custom Duties.

Thompson is No. 12 on the Common Roll, No. 12 on the Barristers' Roll, No. 7 on the Benchers' List and No. 5 on the Roll of Advocates and Attorneys of the King's Bench. He was on the Commission of the Peace of the Newcastle District from its formation and frequently acted as Chairman of the Quarter Sessions.

CHAPTER XXXVII.

JACOB FARRAND.

Jacob Farrand is No. 13 on both the Law Society's Rolls, No. 14 on the List of Benchers (1799), and No. 7 on the King's Bench Roll of Attorneys. He was born in New York in 1763 and was the nephew of Major Gray and consequently the cousin of Solicitor General Gray. He took the Loyalist side and was made a Lieutenant in the First Battalion, King's Royal Regiment of New York, having seven years of active service. He came to Upper Canada and settled in the Eastern District, received a licence to practise under the Act of 1794, and thereafter his name is occasionally to be found in the Term Books. Even before receiving a licence to practise he acted as a lawyer: his name occurs as agent acting under Power of Attorney in the Court of Common Pleas in and for the District of Lunenburg (the Eastern District).

His practice lay in that District, where he was Clerk of the Peace from 1789: he was also Registrar of Stormont and Glengarry from 1796 and of Dundas from 1800—acting in all these offices until his death May 11th, 1803—his remains lie in the graveyard adjoining the Bishop Strachan Memorial Church.

His descendants are still to be found in that region—the late Judge Pringle was a grandson.

It may be added that Jacob Farrand in 1788 received from Lord Dorchester a Commission as Captain in the Battalion of Militia of Williamsburg and Matilda.

CHAPTER XXXVIII.

SAMUEL SHERWOOD.

Samuel Sherwood was the son of Justus Sherwood and brother of Levius Peters Sherwood, who became Justice of the King's Bench—Mr. *Justus* Sherwood is occasionally confused with Mr. *Justice* Sherwood, his son.

Justus Sherwood¹⁰ was a native of Connecticut (probably of Hebron, Conn.), of English descent; he went in 1774 to New Haven, Vermont, settling on the farm on Lanesboro Street afterwards owned by Judge Elias Bottom, and still known as the "Bottom Place," being lot number 31 of the town as originally laid out under its charter from Governor Benning Wentworth of New Hampshire: Sherwood there built a house, still standing. He was "Proprietor's Clerk" from 1774 till 1776, when, as the records have it, "he was a Tory and fled to Canada."

He seems to have gone to St. John's, Quebec. He became a Captain in a Partizan Corps raised among the United Empire Loyalists and well known as the "Queen's Loyal Rangers," commanded by Lieut.-Col. John Peters, a native of Hebron, Conn. He took part with his regiment—and with conspicuous gallantry—in the Battle of Bennington; and throughout the Revolutionary War was "forward in every service of danger," as his Colonel testifies.

In July, 1781, with a company of 23 men, he took possession of Dutchman's Farm, on Lake Champlain, and fortified a part of it. He renamed the place "Loyal Block House" and kept possession of it till the Treaty of Peace in 1783, which acknowledged the independence of the United States; he then sold the farm, reserving the Block House as "King's Property," and went to St. John's. The Block House continued to be occupied by British troops, certainly till 1792, and probably till 1796, when it was given up to the Americans under the

provisions of "Jay's Treaty," along with Detroit, Niagara and other places on that side of the international boundary.

Captain Justus Sherwood in 1784 came with family and slaves, located two miles above Prescott, in the Township of Augusta, and took up land in that Township. He obtained the patent of the north-east quarter of lot 17 in the 5th concession in 1796, and his son Samuel patents of lots 7 (in 1799) and 8 with the east half of 9 (in 1801), in the first concession, 300 acres; while Levius Peters Sherwood received those of lots 8 and 9 in the 2nd (1801) with lot 25 and the east half of lot 26 in the 4th concession (in 1802).

Samuel was left behind in Montreal to study law in the office of "Lawyer Walker," where he remained two or three years. Walker's name does not appear in the extant list of legal practitioners, but that list is known to be defective. Sherwood was in 1796 granted a licence under the Act of 1794 and so was a member of the profession in active practice in 1797 when the Act was passed instituting the Law Society; he received the degree of Barrister-at-Law in that year with the others. He is No. 14 on both the Rolls. He appeared in Term in the King's Bench only very occasionally: no doubt he found it cheaper and better to employ Counsel than to take the arduous as well as dangerous trip to the Capital. He became a Bencher in 1797, No. 15 on the List, but did not attend meetings, no doubt for the same reason that he did not appear in Term. Practising in the District of Johnstown, he was appointed a Justice of the Peace and afterwards Judge of the District Court, the first lawyer, it is said, to fill that position.

He was elected in 1801 for the third Parliament of Upper Canada as member of the House of Assembly for Grenville. He attended the first session from the first day, and took a very active part in the task of legislation. Though late in attending the second session, he was equally active in that session. With six others

he was reported against in the session of 1803 as absent from duty, and his name does not appear on any division list during that session. He was active in 1804, and was (possibly for that reason) refused leave late in the session to go home. He was apparently re-elected in 1805 for the fourth, in 1809 for the fifth, and in 1812 for the sixth Parliament, though he does not seem to have taken any active part in that Parliament till 1814. He does not appear to have been afterwards a member: he was succeeded at the election of 1816 by Jonas Jones.

He was a man of great capacity and an able lawyer, though he did not achieve such prominence as his brother, who became a Justice of the King's Bench.

The most celebrated cases in which he was concerned were those arising out of the Red River troubles. The Earl of Selkirk founded a settlement in the North-West in what is now Manitoba: the North-West Company, a fur trading company, did not want any agricultural settlement in their hunting and trading ground, and there was much trouble between the company's servants and Selkirk's settlers, extending to bloodshed in more than one instance. Selkirk arrested a number of these servants and sent them east for trial. They were tried at York, October, 1818, before the full bench of King's Bench Judges and their associates, with a jury. Samuel Sherwood, his brother, Levius Peters Sherwood, and Dr. W. W. Baldwin, defended them. The proceedings are extant, and show that the whole trial was conducted with great decorum and much skill and judgment on both sides. The verdict was an acquittal.

He is not infrequently confounded with his nephew of the same name (son of the Judge) and Registrar at Toronto. He is No. 13 on the Attorneys' Roll.

CHAPTER XXXIX.

JOHN MCKAY, WILLIAM WEEKES.

Of John McKay, No 15, on both Rolls. No. 16 on the Benchers' List, I can find no account. He does not seem to have received a licence under the Act of 1794 and did not sign the King's Bench Roll of Attorneys: I do not find his name mentioned in the Term Books.

Perhaps he was the John McKay (see 2 Geo. IV., c. 22 (U.C.), a Provincial Act) who was one of the executors of the estate of the only other who was admitted Barrister-at-Law during the 1700's and whom it may be well now to mention.

William Weekes (or Weeks), No. 16 on the Law Society's Rolls, No. 13 on the Benchers' List, and 15 on the Attorneys' Roll, was an Irishman, and had been a law student in his native land; the tongue of scandal afterwards did not hesitate to say he had been disloyal even there. He emigrated to New York, where for a time he was a supporter (it is said, a student) of the notorious Aaron Burr. Becoming tired of the new Republic, he made his way into Upper Canada, where he was admitted to practise (No. 15 on the Roll) as an Attorney, April 10th, 1798, and in Trinity Term, 1799, he was given the degree of Barrister-at-Law. He was a turbulent spirit, with great flow of language and no little ability. He soon acquired a very large practice, his name appearing in a great percentage of the motions in Term, and it is well known that he was in great demand at *Nisi Prius*.

Like many of his countrymen, he was "agin' the gover'ment," and became a leader in the Radical Party. Angus Macdonell, who had been elected to represent Durham, Simcoe and the East Riding of York, being, as we have seen, drowned in the "Speedy" disaster in October, 1804, Weekes, whose life had been saved by his riding

to the Court town instead of taking ship, came forward as a candidate on the Radical side. Largely through the influence of his friend and fellow countryman, Sheriff Joseph Willcocks (who had been without a doubt a United Irishman in his native land), he was elected and took his seat February, 1805. This was the Willcocks who was, in 1808, committed by the House of Assembly to gaol for contempt, and who, after fighting for his country at Queenston Heights, deserted and became an officer in the American Army. He was shot and killed at the siege of Fort Erie, clad in an American Colonel's uniform. Some say he was goaded into rebellion: *Credat Judaeus Appella*.

Weekes joined himself to Mr. Justice Thorpe, another Irishman and equally turbulent. He was with him at Charlotteville when Thorpe made the address to the Grand Jury, comment by the ardent Tory, Colonel Joseph Ryerson, upon which led to the only prosecution for *scandalum magnatum*¹¹ which so far as is known was ever instituted on this side of the Atlantic: it also led, no long time afterwards (1807), to Thorpe's dismissal. In that address Thorpe attacked the Government in no measured terms, and Gore was not the man to overlook such an offence.

Weekes did not live long to enjoy his position as member of the House. In October, 1806, he appeared with his colleague, William Dickson (called in Easter Term, 1803, No. 27 and 21 on the Law Society's Rolls, No. 19 on the list of Benchers), as Counsel in a case tried before Mr. Justice Thorpe at Niagara. In his address he assailed the Government most violently without interference from—rather with the approval of—the Bench; Dickson followed with a vigorous rebuke to his colleague. No notice was taken by Weekes that day (Monday) or the next, but the following day he sent Dickson a challenge. Contemporary letters (in my possession), wholly private in their nature, assert plainly that Weekes spent the evening and part of the night

before the challenge at a tavern with Thorpe, and that it was arranged by them that a challenge should be sent to Dickson, in the belief that Dickson having a wife and large family, Weekes having neither, Dickson would refuse and permit himself to be branded as a coward. But the intended victim accepted the challenge; the duellists crossed the river on the morning of Friday, October 10, 1806, and in the shadow of a bastion of the old Fort, Weekes received a mortal wound, of which he died the same evening. He was succeeded in his seat by his friend, Thorpe, much to the disgust of the Governor and the official party and not a little to Thorpe's own undoing.

Dickson was afterwards, September 27, 1815, the Honourable William Dickson, member of the Legislative Council; "an enterprising Scotsman." He was the mainspring of the celebrated prosecution and banishment of Robert Gourlay, "The Banished Briton," in 1819.

Weekes was a man of public spirit. We find him subscribing liberally to a scheme for opening up Yonge Street; and by his will he left his property for educational purposes. The trusts of this will came up more than once in Parliament, and the administration of the estate was the subject of considerable scandal—it was claimed that the administrators in high station got most of it.

He was very fond of shooting, and on one occasion his prolonged absence gave great anxiety to his friends. What were taken to be human remains found on the premises of Peter Ernst (or Ernest), a German settler on the Kingston Road, caused that honest man to be accused of his murder. Things looked dark for Ernst till Weekes turned up alive and well.

Weekes was very impulsive and frequently got into trouble with the Courts through his hasty temper. One instance is of record:—

In Michaelmas Term, 43 Geo. III., 8th November, 1802, at a sittings of the King's Bench (present Allcock, C.J., and Powell, J.), an order was made as follows: "The Court will permit that Mr. Weekes appear in his place at the Bar to-morrow, when he may state his contrition for his offence, and particularly for the insult personally offered to the Chief Justice, and the Court will then consider what further order will be just to be made with reference to Mr. Weekes.

By the Court,

DAVID BURNS,

Clerk of the Crown, &c."

Peace was shortly declared—no doubt Mr. Weekes made proper apology, for next day the same Court directed that the order with respect to Mr. Weekes be rescinded and we hear no more of the matter.

I extract one more entry from the Term Books of the King's Bench.

In Trinity Term, 42 Geo. III., July 17, 1802, the full Court, Elmsley, C.J., Powell and Allcock, JJ., in a case of William Weekes v. Hon. Thomas Allcock, ordered that the venue be changed from the Home District to the District of Niagara, Mr. Thos. Scott (afterwards Chief Justice of Upper Canada) being Attorney for the Defendant.

This was the last sittings at which Chief Justice Elmsley sat in Upper Canada: he was appointed Chief Justice of Lower Canada in October, 1802, and Allcock was appointed to succeed him as Chief Justice of Upper Canada.

CHAPTER XL.

SIR DAVID WILLIAM SMITH, BART.

There were four persons who had received a licence under the Act of 1794 who never became Barristers—they were David William Smith, No. 1; Richard Barnes Tickell, No. 2; Davenport Phelps (who did not sign the Roll of Attorneys), and Charles J. Peters, No. 11, on the Roll of Attorneys.

Of the four advocates who did not become Barristers-at-Law, the only one calling for special attention is David William Smith. He was the only son of Major Smith, the well-known Commandant at Detroit, who became Commandant at Niagara in 1792, and dying, November 19, 1795, "Commandant of Niagara and its dependencies," was buried November 22 "in the family vault on the west side of the Niagara after forty years' continuous service, without ever having been absent from duty." The son was a Lieutenant in his father's regiment (the 5th Foot), and was appointed Deputy Judge Advocate at Niagara. On July 7th, 1794, i.e., immediately after the institution of the Court of King's Bench, he, then living at Newark, received a licence under the Act 34 Geo. III., from Governor Simcoe "to be and appear as Advocate and Attorney in all and every of His Majesty's Courts." (This licence is dated at Navy Hall, July 7th, 1794, and is copied at the back of Term Book No. 2). I do not find that he ever appeared in Court; his licence forbade him taking "a Clerk or Clerks by way of qualifying him or them to appear or act as an Advocate or Attorney."

He was in 1792 elected a member of the House for Kent in the first Parliament, in 1796 for the second, third and fourth Ridings of Lincoln in the second Parliament (when he was made an Executive Councillor), and in 1800 for Norfolk, Oxford and Middlesex, in the third Parliament. He was Speaker in the second and

third Houses. Curiously enough he is called the representative for Durham, Simcoe and the East Riding of York in the printed report of the Proceedings of the House upon the motion that he be Speaker of the third; and also "one of the Judges of the Court of King's Bench," which he was not. Mr. Justice Allcock was both the Judge and the representative. It is probable that there is an omission¹² in the printed Report and that Allcock's name appeared in some way.

In June, 1799, being then Speaker as well as Acting Surveyor-General for the Province, he received leave from the House to return to Europe. He had not returned by the opening day of the succeeding session, June 5, 1800, and Samuel Street was elected in his stead. Re-elected Speaker in the new Parliament, May 28, 1801, he presided during that session and the next; but he was again absent in 1803, and Richard Beasley was elected. He went to and returned from England from time to time, and finally being allowed a pension of £200 sterling per annum from the Provincial funds, he went there permanently. He was made a Baronet in 1821 and died in 1837.

Very many papers of his which are of extreme value in the early history of this Province are now in the Toronto Public Library on College Street.¹³

Of the fifteen practitioners who were by law entitled to take part in the formation of the Law Society there were ten who exercised their right—of the five who did not, one, William Birdseye Peters, afterwards joined the Law Society (No. 25 on the Common Roll, Easter Term, 43 Geo. III., 1803) and was called (No. 20 on the Barristers' Roll in the same Term).

The other four, however, remained "Advocates" ("Advocate" in Civil Law Courts corresponds to "Barrister" in Common Law Courts) with all the rights of Barristers-at-Law.

NOTES TO PART IX.

¹Some of the information here set out is derived from the Diary of John White, now in the possession of Miss Helen M. Merrill of Toronto, who is about to publish it with notes: it contains many interesting statements concerning Upper Canada and Upper Canadians of the period.

²A contemporary writer gives an account of an episode in Court at Niagara which must refer to White and which presents him in no very favourable light.

"An advocate from England of some authority, determined to avail himself of this apprehensive frame of mind (i.e., the Jury's 'consciences that trembled lest they should judge amiss') to improve it into a means of influence. Thinking it probable, in a particular trial from the circumstances that the Jury would bring in a verdict against his client, he insinuated that in such a case he would bring a writ of Attaint against them!" The writer adds "A writ of Attaint at the close of the 18th Century! Think you * * that there is a Bench in Westminster Hall, whose gravity would not have been shaken at this, and the risible emotion felt through the extremest ranks of the Bar." "Canadian Letters * * * C. A. Marchand, Printer to the Antiquarian and Numismatic Society, 40 Jacques Cartier Square, Montreal, 1912," pp. 57, 58.

Probably White thought he could presume on the ignorance of the Jury and of the Judge, Peter Russell, who was a layman, to threaten a writ which had been discontinued for nearly two centuries—if so, it is little to his credit.

³He did not think much of his fellow legislators—October 1, 1792, he notes in his Diary "in the House of Assembly * * * where indeed there has been unusual ignorance and stupidity" and June 25, 1793, speaking of the Slave Bill he enters "Debated the Slave Bill hardly. Met much opposition but little argument"—which with his entry July 15 "Much warmth in Court," give a human touch to the century-old little book.

⁴For an account of this and other duels see an article by the present writer in *The Canadian Law Times* for September, 1915 (35 Can. L.T., p. 726), "The Duel in Early Upper Canada," reprinted from the *Journal of the American Institute of Criminal Law and Criminology* for July 1915, p. 165.

⁵It seems manifest that it was he to whom Simcoe intrusted the conduct of his favourite measures including that for the abolition of Slavery in Upper Canada (1793), 33 George III., ch. 7 (U.C.). See a series of articles by the present writer on "Some Early Legislation and Legislators in Upper Canada," *Canadian Law Times* for 1913 and 1914.

⁶“Ontario” was not the present County of Ontario which had then few inhabitants, but was composed of the Islands on the north side of the River St. Lawrence and Lake Ontario.

⁷The name “Toronto” was the original name of this place: Simcoe changed it to York in 1793, and it retained that name till 1834 when the original name was restored. *Fiat aeternum*. The inhabitants complained that there were so many towns in America called York that their town might be overlooked, moreover it was intolerable to hear the Capital of the Province called “Little York”; and besides “Toronto” was the original name, was more musical, and there was no other Toronto. A prophet like Teucer might have foreseen “ambiguam tellure nova Torontonem futuram”; but at the time there did not seem to be any fear of “Toronto” becoming ambiguous, as it has.

⁸This appears from the Proceedings of the Legislative Council June 1st, 1793 (Ontario Archives Report, 1910, p. 16).

⁹In the Upper Canada Gazette published at Niagara-on-the-Lake, in its issue of August 14th, 1795, appears the following advertisement:—

“Ran away from the subscriber a few weeks ago, a negro wench, named ‘Sue.’ This is, therefore, to forewarn all manner of persons from harbouring said wench, under the penalties of the law, James Clark, Senior.” “Niagara, August 17th, 1795.” His name is spelled “Clerk” in the newspaper notice of his receiving a Licence to practise Law.

¹⁰Much of the information as to Justus Sherwood I have from an address made by my friend Mr. Henry Harman Noble (a citizen of the State of New York), at New Hero, Vermont, on the occasion of the erection and unveiling by the Vermont Society, Sons of the American Revolution, of a boulder and inscribed tablet in commemoration of the building (July, 1781) on the spot, of Loyal Block House, and of its builder, Captain Justus Sherwood. The occasion had added interest from the presence of Lieutenant-Colonel Sherwood of the Dominion Police, the great grandson of Justus Sherwood, grandson of Mr. Justice Sherwood.

¹¹A full account of the action is to be found in an article by the present writer in the “Journal of the American Institute of Criminal Law and Criminology” for May, 1913, “Scandalum Magnatum in Upper Canada” (4 Jour. Am. Inst. C.L. & C., p. 12). Some account will be found in the same article also of Mr. Justice Thorpe.

¹²I have made enquiry and find the Printed Report is an exact transcript of the manuscript copy furnished by the Home authorities.

[I have allowed the text and Note 12 to stand as originally written, to indicate the difficulties one encounters in unearthing the facts of the early history of the Province. The original records of the proceedings of the House of Assembly for 1796 were burned by the Americans on their capture of York in the War of 1812: and it was believed that no printed copy was in existence. Copies of the Proceedings of both Houses were sent to England at the close of every session for the information of the Home Government. The Archivist for the Province of Ontario, Dr. Alexander Fraser, procured copies of these copies and has printed some of them; the remainder will follow. The error noted in the text appears not only in the Archives Report printed, but also in the copy furnished to the Archivist.

But during the present month (December, 1915) my friend, Professor J. W. Bain of the University of Toronto, has lent me a contemporary printed copy of these very Proceedings, which was formerly the property of Sir David William Smith and is probably unique.

In this, it appears that "Mr. Justice Allcock, one of the Judges of the Court of King's Bench," seconded the nomination of Smith as Speaker; thus the apparent mistake is explained.]

¹³Some are in the possession of Prof. Bain of the University of Toronto, who has kindly allowed me the use of them. Smith published a Description and Gazetteer of Upper Canada in 1799. "A Short Topographical Description of His Majesty's Province of Upper Canada in North America, to which is annexed a Provincial Gazetteer, London, Published by W. Faden, Geographer to His Majesty, and to His Royal Highness the Prince of Wales: Charing Cross, 1799: Printed by W. Bulmer and Co. Russell Court, Cleveland Row, St. James." Crown 8 vo. It is rather rare. In the advertisement his name is spelled "Smyth."

It is not without interest to note that Smith was the first to open a Register for the Entry of Meteorological, Barometrical and Thermometrical observations—this he did August, 1794, in the Surveyor General's office, Newark, and invited from the Public, communications of that nature.

He became a member of the Executive Council in 1796 and a J.P. of the Home District the same year, in 1797 Deputy Lieutenant of the Second Riding of Lincoln and Colonel of that Regiment.

Much to the disgust of the Radical element, he was, in 1833, granted a pension of £200 sterling out of the public funds of Upper Canada (why, no one knows—probably just because he "needed the money").

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